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ABSTRACT

This document consists of three issues of a serial devoted to law-related education (LRE) that offers background information on a wide range of legal issues and teaching strategies for LRE. The title themes for the three issues include: (1) "Speech, Press, Religion, Assembly, Petition"; (2) "Law in the New Information Age"; and (3) "Human Rights." Background articles are provided along with teaching materials on such topics as the U.S. Constitution, public school prayer, human rights around the world, health care, and conducting and comparing surveys. Additionally, sections on "Update on the Courts" and "Update on Congress" provide current information on Supreme Court and other federal court cases and decisions and current activities of the U.S. Congress. Teaching materials propose methods that involve class discussion, collaborative learning, and role playing activities. Many lesson plans include student handouts and visuals. (LB)

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Winter 1998 / VOL 22 NO 1

UPDATE ON LAW-RELATED EDUCATION

American Bar Association Division for Public Education

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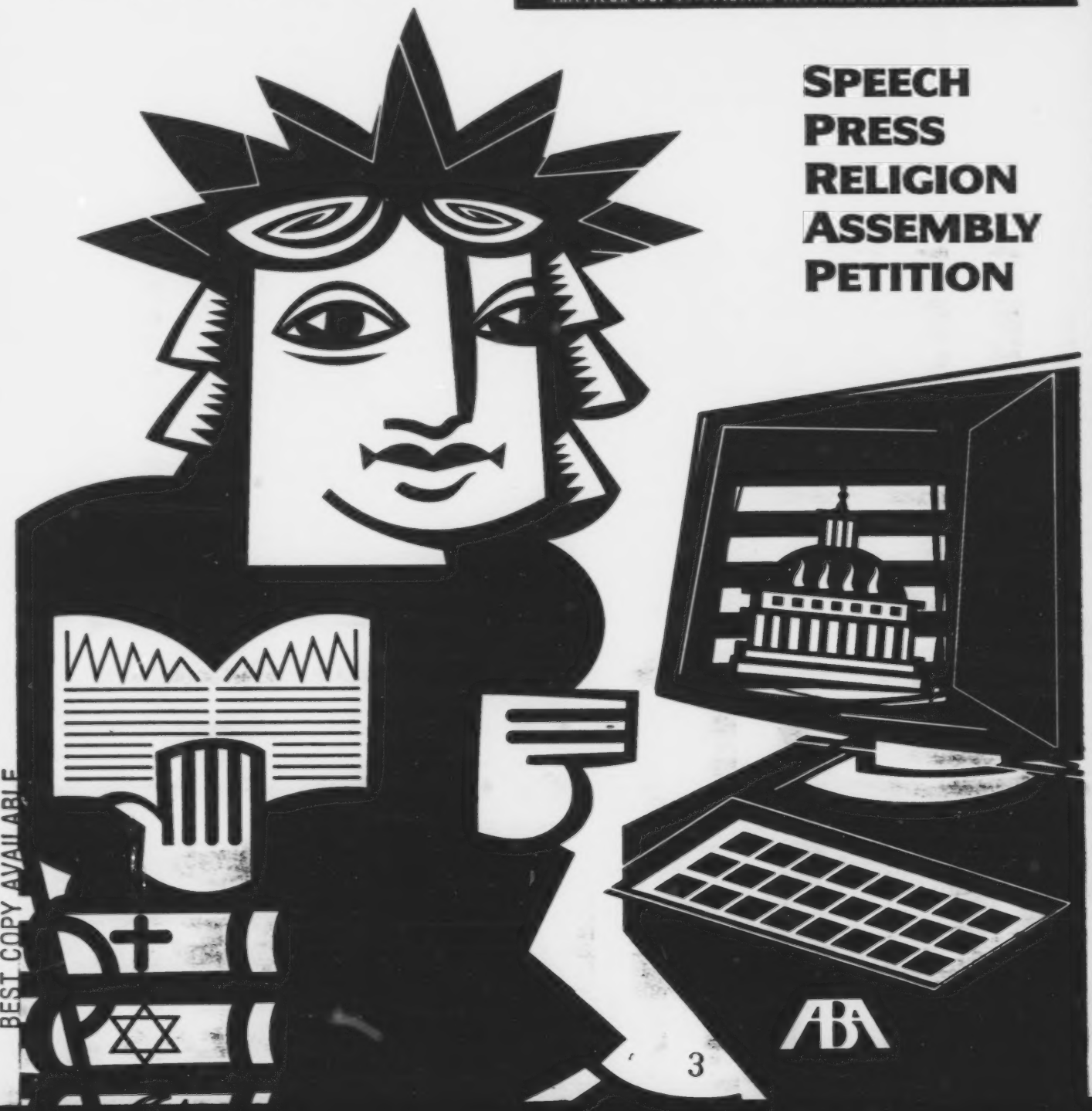

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What's Inside?

According to the results of The Freedom Forum's recent public opinion poll on First Amendment issues, few Americans are able to name all the First Amendment freedoms—speech, religion, press, assembly, and petition—even though most feel that these rights are not just important but essential to Americans. This edition of *Update on Law-Related Education* is dedicated to supporting the continuing efforts in schools not only to teach students what our First Amendment freedoms are, but to prepare young people to exercise these rights in informed and productive ways.

The contributions of staff at three key associations were invaluable to the development of the edition's content. Special thanks go to Paul McMasters, First Amendment Ombudsman at The Freedom Forum World Center, for overseeing the adaptation of materials for both teachers and students from the center's poll and its report "State of the First Amendment." We also acknowledge with much appreciation the efforts of Charles Haynes and Marcia Beauchamp at The Freedom Forum First Amendment Center, and of Shabbir Mansuri and staff at the Council on Islamic Education, all of whom put in many hours to furnish classrooms with materials that reinforce an understanding of the free exercise and establishment clauses of the First Amendment by applying them to the religious needs and requirements of Muslims attending public schools.

We are greatly indebted to Bob Peck and Ginny Sloane at Citizens for the Constitution for sharing prepublication information with us about the guidelines their organization has developed for use when proposing to amend the Constitution. The historical insights and thoughtful, balanced approach in these materials support two excellent strategies on amending the Constitution by Keith Pittman and by Kathleen S. Roberts and David T. Naylor. Finally, acknowledgments would be incomplete without thanking regular contributors Wanda Routier and Margaret Fisher for their respective contributions of a student survey modeled after that of The Freedom Forum, and a perspective on religious freedom, prisons, and the recently struck down Religious Freedom Restoration Act.

Seva Johnson
Editorial Director
Youth Education Publications

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Update helps secondary teachers of civics, government, history, and law, as well as law-related education program developers, to educate students about the law and legal issues. The views expressed in this document are those of the authors and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association, the Fund for Justice and Education, or the Standing Committee on Public Education.

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DON'T MISS OUR SPECIAL EDITION ON

Technology, Alternative Media, and the Law

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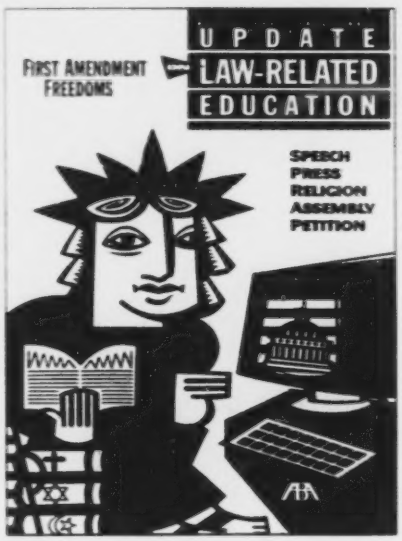
Winter 1998



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The Freedom Forum First Amendment Poll: An Analysis

Americans speak up about their First Amendment rights.

Update on Law-Related Education, 22.1, 1998, pp. 4–5, 8, 16. © 1998 American Bar Association.

A Note to Teachers: You might find it useful to clarify with students that legal restrictions on speech are actually possible in the United States—but not by governmental bodies. For example, while the Constitution bars U.S. Congress and state legislatures from "abridging the freedom of speech," private businesses, schools, and clubs are not so prohibited for staff and members.

Elections and campaigns, significant international events, terrorism, political scandals, corporate mergers, natural disasters, and high-profile crimes are common topics of public opinion polls. They are events that most often have a beginning and an end. Their high visibility in the news and their public interest make polls on these topics newsworthy in and of themselves. Public opinion polls on enduring, more abstract issues not generally discussed at dinner, at work, or in the news are far less common. Such is the case with polls on the First Amendment: It is unusual to find extensive public opinion polls on First Amendment issues.

Known as the Bill of Rights, the first ten Amendments were adopted in 1791 as a condition of the ratification of the U.S. Constitution because Americans were concerned about a strong central government without guarantees of fundamental individual freedoms. For more than two centuries now, the First Amendment has been one of the pillars of the remarkable liberties that U.S. citizens enjoy. It has served this democracy and its citizens well.

For the most part, major threats to First Amendment rights and values have not been successful, whether through public resistance or action by the courts. Yet these threats persist, proving First Amendment freedoms have to be won over and over again.

See Teaching Strategy for this article on page 35.

The Freedom Forum poll measured public opinion on a wide variety of First Amendment issues. It is the first significant inquiry into public opinion on the First Amendment since 1991, when Robert Wyatt reported on a series of polls, finding that, from the perspective of the American public, "it is apparent that free expression is in very deep trouble."

The Freedom Forum poll on the First Amendment was conducted by telephone between July 17 and August

Amendment 1

Freedom of religion, speech, and the press; rights of assembly and petition

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The establishment clause of the First Amendment forbids the U.S. Congress to in any way found or provide for an official national church. The clause has been interpreted to forbid the government's endorsement or funding of any religious doctrine. Further, the First Amendment forbids Congress from passing any laws that limit worship, speech, or the press, or that prevent people from meeting (assembling) peacefully or asking (petitioning) the government for relief from unfair treatment. First Amendment rights have limits; for example, some speech, such as libel or obscenity, is not protected, and some religious practices, such as those that may jeopardize public safety, can be regulated.

1, 1997, by the Center for Survey Research and Analysis at the University of Connecticut. 1,026 adults were surveyed. Sampling error is ±3% at the 95% level of confidence. The Freedom Forum sought to provide a comprehensive picture of contemporary American opinion on the First Amendment and to trace changes in opinion wherever possible. The survey addressed these First Amendment issues:

The Freedom Forum sought to provide a comprehensive picture of contemporary American opinion on the First Amendment. ...

- How important are First Amendment freedoms to Americans?
- How do First Amendment freedoms compare in importance to other constitutionally protected rights?
- Is support for the First Amendment holding steady, or is it changing?
- Would Americans vote to ratify the First Amendment if they were voting on it today?
- What do Americans feel about the amount of freedom currently afforded by the First Amendment's protections of religion, speech, press, assembly, and petition?
- Do Americans think they have too much, too little, or about the right amount of freedom in each of these areas?
- To what extent would Americans restrict First Amendment freedoms?
- Are Americans more protective of their own rights than the rights of others?
- How do Americans feel about amending the First Amendment?
- What are Americans' experiences with and opinions about First Amendment education in the schools?
- How free do Americans feel to express themselves in different situations, such as at work and in the classroom?

Freedoms Largely Supported

The Freedom Forum poll found that, on the whole, the First Amendment is alive and well—at least from the perspective of the American people, who express strong support for the freedoms it guarantees. While some of the findings suggest that Americans have actually become more supportive of First Amendment rights over the past two decades, there are other findings indicating less-than-wholehearted endorsement of certain rights when confronted with specific instances of the First Amendment in action.

Most Americans feel that First Amendment freedoms—religion, speech, press, assembly, and petition—are not just important but essential American rights. Eight in 10 feel this way about freedom to practice religion, seven in 10 about freedom of speech and the right to practice no religion, six in 10 about freedom of the press, and more than five in 10 about the right to assemble and petition. Fewer than 10 percent say that any First Amendment freedom is not important. Ninety-three percent say they would ratify the First Amendment if they were voting on it today.

Americans express strong skepticism about having the government place restrictions on any First Amendment freedom. For example, 90 percent of Americans say they should be allowed to express unpopular opinions, and majorities feel that companies ought to have the right to advertise tobacco and alcohol products. Fifty percent of those polled believe that government should not be involved in rating television programs, compared with 46 percent who thought it was all right. Nearly 90 percent of those polled showed a firm appreciation for the "slippery slope"

Most Americans feel that First Amendment freedoms—religion, speech, press, assembly, and petition—are not just important but essential American rights.

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State of the First Amendment Report

In December 1997, The Freedom Forum released *State of the First Amendment*, a report by lawyer and author Donna Demac that included an analysis of "The Freedom Forum Poll," a comprehensive measure of public opinion on First Amendment issues and the first significant inquiry of its type since 1991. The present article presents portions of the analysis, which was written by Kenneth Dautrich, director of the Center for Survey Research and Analysis at the University of Connecticut. The poll was conducted by Professor Dautrich for The Freedom Forum.

The Freedom Forum is a nonpartisan international foundation dedicated to free press, free speech, and free spirit for all people. The full text of the poll and the analysis, as well as other information of use to classrooms, can be accessed on line at http://www.freedomforum.org/newsstand/reports/sofa/printsofa.asp

Source: State of the First Amendment, *Donna Demac (Arlington, Va.: The Freedom Forum, 1997), by permission of the publisher.*

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First Amendment Reflections

Update on Law-Related Education, 22.1, 1998, pp. 6–7. © 1998 American Bar Association.

[T]here is nothing inconsistent between the First Amendment and many of the other values we most hold dear. The First Amendment has been the most important civil rights act ever passed. It has been the most important political reform ever passed. You can go down the list of other things that we value, and again, we would submit that the First Amendment, first and foremost, has protected those rights. ... We can all be speaking at the same time. We might not hear each other at that moment, but there is nothing to stop us from doing so. There is no limit to the avenues, sentiments, range of ideas that can be spoken.

—Robert S. Peck, First Amendment attorney and director of legal affairs and policy research, Association of Trial Lawyers of America (ATLA)

First Amendment principles are affirmed and embraced at a level of generality which has no contact with the way in which people actually live and think. ... [T]he First Amendment is a good in and of itself ... a bunch of words, whether wonderfully or lamentably vague, which are then filled with a substantive content of whatever group manages to get its preferred vocabulary into the First Amendment. That is why I never recommend jettisoning the First Amendment, although I write about its incoherences all the time. My advice is always get a hold of it and rewrite it so that it will generate the agendas, inclusions, and exclusions you desire, rather than the ones that are now being generated by your enemies.

—Stanley Fish, arts and sciences professor of English, Duke University

[T]here really has been a dramatic change [in] thinking about the First Amendment as allowing the government some affirmative role, or even the First Amendment as demanding an affirmative role, in terms of equalizing opportunities for participation in democratic decision making. ... The idea that the First Amendment would allow, encourage, maybe even demand [regulation] is just out of the picture. ... It is a mistake to think just in terms of "We can't trust the government to draw any lines." ... [T]here is a set of issues ... about a broader notion of democracy and free speech than simply stopping government from being able to censor. That debate is largely gone today, and I think that is a real pity.

—Lee C. Bollinger, president, University of Michigan

This is all that we have been hearing recently in education or in libraries: "We have to protect the children." They want the government to step in. ... You say, "Well, it is the responsibility of the parents to guide their children in what they read." Then they say, "We can't guide them when it's print. How are we going to deal with the Internet?" So they are pushing the government to get involved in an area that the government had really begun to move substantially away from. I don't find this at all heartening as we move into the 21st century.

—Judith Krug, director, Office for Intellectual Freedom, American Library Association

Source: "Free Speech Roundtable," State of the First Amendment *(Arlington, Va.: The Freedom Forum, 1997), pages 19–27.*

Related activities can be found on page 35.

In many attempts to protect the First Amendment, a number of fine First Amendment defenders have defanged it, or attempted to defang it. They've said, "No, this speech is really not dangerous. It's safe; we really should allow it." I disagree. I want to protect it precisely because it's dangerous. It seems to me if the First Amendment is to have any real viable force, then sometimes we will have to just bite our lips and say: "This [speech] is dangerous. This really is risky. This really is an experiment. This experiment can really fail, but, nonetheless, we commit ourselves to this experiment for better or worse." And the reality is, it may be for worse.

—Ronald K. L. Collins, First Amendment project director, Center for Science in the Public Interest

If you have networks ... who together provide services to over 12 million Internet subscribers in the U.S., and if they as a policy matter decide to impose some sort of mandatory blocking, so that the default is always that the block is on, then you turn on your computer, and all sorts of speech are blocked. ... [W]hy is that situation any less problematic than one in which the government is involved? ... [I]f we have a victory that seemingly keeps the government out of regulating the Internet, it is a totally hollow victory if your average person ... is privately censored.

—Ann Beeson, attorney, American Civil Liberties Union

We are seeing a repeat of the issues that were around in 1910 and 1920. ... That's what we see in the Communications Decency Act. That is what we see on a whole range of issues like TV ratings and tobacco advertising regulation. ... It is sort of a cultural McCarthyism, where you are not debating whether there is a Red under every bed, but whether or not the government ought to act like our parents. ... Free speech has always been dangerous to people in authority. ... That's why printing presses were licensed. That's exactly why the Internet is under siege, because people in authority see this as a way of getting around them, of challenging their positions of power. ... Censorship is reverse engineered. Once you allow it for a more advanced medium, it tends to end up bleeding all over.

—Robert Corn-Revere, First Amendment attorney

Instructional Idea

Have 14 student volunteers pair up to prepare oral arguments, one pro and one con, for each of the seven excerpts. Classmates will determine the winners of each debate. In researching their arguments, students should first consult the source document, *State of the First Amendment*, available through The Freedom Forum World Center, 1101 Wilson Blvd., Arlington, VA 22209, (703) 528-0800, www.freedomforum.org, or by calling (800) 830-3733.

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argument: they understand that, once restrictions are placed on these rights, it becomes easier to place further restrictions on them.

In the area of speech rights, most Americans are quick to support restrictions, particularly when sexually explicit and/or offensive material is at issue. For example, most Americans disagree with allowing nudity to be broadcast by the media or sexual material to be available on the Internet. Also, on a right-to-petition issue, seven in 10 do not think that groups should be allowed to hire people to influence government officials or policies. On free press, strong majorities disagree that the use of hidden cameras should be allowed. And, on religion, while most Americans are willing to extend freedom to worship to groups regardless of how extreme their beliefs are, most also are willing to agree with allowing practices that blur the line between church and state.

One sign that the First Amendment is healthy is that the majority do not support two constitutional amendments that would alter it.

One sign that the First Amendment is healthy is that the majority do not support two constitutional amendments that would alter it. While most Americans disagree with flag-burning as a form of political speech, only 49 percent would amend the Constitution to prohibit the practice; and while majorities would permit prayer in schools under some circumstances, only 42 percent would favor a school-prayer amendment to the Constitution.

The perceived importance and support for the First Amendment reflect Americans' sense that current applications of the freedoms are neither too restrictive nor too lax, but about right. Some 70 percent of those polled said that Americans have the right to speak freely, and the same number think that we have the right amount of religious freedom. In both these areas, 20 percent say there should be more freedom and 10 percent say there should be less.

Opinion is less favorable to the press, with about half saying the press has about the right amount of freedom and 38 percent saying it has too much. On the other hand, strong majorities hold that tabloid news should have the same protections as more traditional

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Interesting Research Facts

- Fifty percent of Americans name free speech as the right or freedom most important to Americans, with freedom to practice religion second at 14 percent.
- When read a list of rights and asked which were "essential," Americans responded in these percentages: right to a fair trial (86%), right to practice religion (81%), right to privacy (78%), right to speak freely (72%), right to practice no religion (66%), right to be informed by a free press (60%), right to assemble (56%), and right to own firearms (33%).
- Forty-nine percent of survey respondents had not heard or read of the recent U.S. Supreme Court ruling regarding the Internet.
- When speech is considered indecent or offensive or when it debases the flag, most Americans are strongly opposed to it.
- Over 70 percent of Americans oppose the use of words in public that might be offensive to racial minorities, sexually explicit material on the Internet, and the broadcast of nude or partially clothed persons.
- While more than three-quarters of Americans are opposed to burning or defacing the American flag as a political statement, they are evenly divided over amending the Constitution to make it illegal to burn or desecrate the flag.
- Sixty-eight percent of Americans are opposed to television networks being allowed to project winners of an election while many people are still voting.
- Those who believe jailing reporters is justified have increased significantly in the past 20 years, from 21 to 36 percent.
- Fifty-seven percent of Americans believe that teachers or other public school officials should be allowed to lead prayers in school; 81 percent believe that it is proper for a prayer to be said at a high school graduation ceremony if a majority of the graduating class favors it.
- Sixty-five percent of Americans do not believe that a group should be able to hire lobbyists to influence government officials or policies.
- Seventy-eight percent believe that curfews do not violate young people's First Amendment rights.
- Almost two-thirds of Americans report that the American educational system is doing only fair to poor when it comes to teaching about First Amendment freedoms.

PERSPECTIVE

Prisons and the Religious Freedom Restoration Act

Margaret E. Fisher

Update on Law-Related Education, 22.1, 1998, p. 9. © 1998 American Bar Association.

"No, you can't touch my medicine bag," says one Native American inmate.

"I can only eat a Kosher diet," says one Jewish inmate.

"I request to use peyote, a hallucinogenic drug, as part of my religious services," says another inmate.

"Officer Mary cannot do a pat search of me because my religion forbids me to be touched by females other than my mother or wife," says a Muslim inmate.

"I have the right to wear a crucifix around my neck," says a Christian inmate.

"I have the right to circulate racist religious literature," says another inmate.

Prison and jail inmates have filed civil rights cases in all of the examples above and many more, claiming that their rights to practice religion were violated. The important legal question is what standard or test will the courts use to decide whether or not inmates have these rights.

In 1993, the Religious Freedom Restoration Act (RFRA) was passed by Congress, granting people greater rights to practice their religion. Congress considered making an exception that the law would not apply to prisoners. This it refused to do.

As an attorney who has conducted training of correctional administration, staff, and inmates for over 20 years and served as a court-appointed expert in several prison cases, I was involved in many discussions with administration and staff fearing the security problems that might arise if inmates were allowed greater leeway in practicing their religion within the institution.

The statute stated that anytime government substantially burdened religion, it had to justify its action by showing that it had a compelling state interest in doing so and that it was restricting religion in the least restrictive way. As the Legal Issues curriculum of one state training academy for corrections officers stated, "Virtually all the case law dealing with restrictions on religious practices in jails and prison is now effectively reversed! overturned! reopened to be litigated all over again, because of RFRA!"

But it never happened! During the four years when RFRA was the law of the land, inmates brought many cases claiming their rights to practice religion under RFRA were violated. Surprisingly, the outcomes of these cases were pretty much as they had been before RFRA was law. There was a rare situation in which security was shown not be threatened by the religious practice, as in the statewide ban of the wearing of crucifixes by inmates. Because the ban applied to all inmates, including those in a minimum security setting where inmates were not likely to use them as weapons, one court struck down the statewide ban, stating that the department of corrections had not used the least restrictive means in restricting this religious practice. Courts generally determined that security is a compelling state interest and refused to expand the scope of inmate rights to practice religion from what was already protected by the First Amendment's freedom of religion. ♦

Instructional Idea

Have students think about how a judge decides what is a valid religion. Are there some features that all religions have in common? If possible, arrange a tour of a local correctional facility or invite a corrections officer to class to talk about the benefits and challenges presented by inmates in the practice of their religions within an institution.

A Note to Teachers: Many legal issues involving religious freedom are controversial. This *Update* perspective gives background information, and the Instructional Idea provides an opportunity for you and your students to explore religious freedoms within institutions.

Margaret Fisher is an attorney with 21 years' experience in educating the public in the law. She lives in Seattle, Washington.

State of the First Amendment: Freedom of Religion

The pressures on religious freedom are increasing.

Update on Law-Related Education, 22.1, 1998, pp. 10–16. © 1998 American Bar Association

Today, there are disturbing signs in the United States that religious liberty—the freedom to believe or not to believe and to practice one's faith openly and freely without government interference—is in danger. People undermining religious liberty include both those who seek to establish in law a "Christian America" and those who seek to exclude religion from public life entirely.

In our time, religion has become a source of divisiveness as people spar and sometimes resort to violence over issues of conscience and belief such as abortion, school prayer, and public school curricula. On the one side are those who think that religious fundamentalists and organizations such as the Christian Coalition are trying to impose their beliefs on society and thus undermine the secular tradition in institutions such as the public schools. On the other side are those who complain that this society allows insufficient attention, and accords no priority, to religious beliefs, especially in instruction and textbooks. Oliver Thomas, a lawyer who works for a number of different church organizations, says that "there is a bias against religion in academia and the media, although it is not a conscious hostility." The situation is made more complicated by the fact that the religious composition of the United States is becoming more diverse than ever. Along with many groups of Christians and Jews, this country is now home to growing numbers of Muslims, Hindus, Buddhists, and other believers, as well as nonbelievers.

The 1997 Supreme Court decision in *Agostini v. Felton*, 117 S.Ct. 1997, is an indication that the court's position regarding the establishment clause is changing. By a 5–4 vote, the court held that publicly paid teachers can go into sectarian schools to provide Title I educational services without running afoul of the principle of separation of church and state.

Religion and Public Schools

One of the critical arenas for the issue of religious freedom in this country has been public education. It is in public schools that the conflict between private religious beliefs and the tradition of public secularism plays out with the most fervor, given that this is where the attitudes of the next generation of American adults are being shaped.

The issue of religion in public schools has sparked a variety of controversies throughout our history. In recent decades, two of the more contentious issues have involved whether evolution or creationism should be given precedence in teaching about the origins of the human race and whether there is a place for prayer in public schools. Prayer remains a major controversy. The proponents of creationism, after losing in court, *Edwards v. Aguillard*, 482 U.S. 578 (1987), have refocused their campaign to have creationism included in school curricula and evolution stricken and to make it financially easier for parents to send their children to private religious schools. That effort has given rise to the current debate over school vouchers.

Information in this article is used in the Teaching Strategy on page 41. Also the Student Forum on page 52 offers a technique to help students debate the issue of school prayer.

School Prayer

Almighty God, we acknowledge our dependence on Thee and beg Thy blessings upon us, our parents, our teachers, and our country.

The Supreme Court declared in 1962 that this school prayer—which had been endorsed by the New York State Board of Regents—was state-sponsored establishment of religion, in violation of the establishment clause of the First Amendment, *Engel v. Vitale*, 370 U.S. 421 (1962). The issue of prayer in public schools has been

Adapted from "Freedom of Religion," State of the First Amendment, Donna Demac (Arlington, Va.: The Freedom Forum, 1997), by permission of the publisher.

Historical Perspective

The First Amendment guarantee of religious freedom is a key element of the boldest political experiment the world has ever known. Many of this nation's early settlers came to this country to escape laws that compelled them to support government-favored churches. Yet, before the American Revolution, in many parts of the colonies, residents were required to support established churches with their tax money, and religious dissenters were punished. These practices generated strong resentment among many of the freedom-loving colonials. Yet it was not until after the Revolution that the principle of religious freedom was firmly established. The turning point was the successful crusade by Thomas Jefferson and James Madison to get Virginia to adopt the Statute of Religious Liberty in 1786. That law prohibited a state tax in support of all Christian churches in Virginia, but it also declared: "That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief. ..." (Virginia Bill for Religious Liberty, 1786)

The Virginia statute helped create a climate favoring religious freedom that encouraged Madison to include a similar provision in the Bill of Rights. Madison opposed every form and degree of official relation between religion and civil authority. For him, religion was a matter of individual conscience beyond the scope of civil power either to restrain or support. Of particular relevance to our time, Madison viewed state aid and taxation as no less obnoxious to the pursuit of religious freedom than other forms of state interference. Because of Madison, these sentiments found a secure place as the first freedoms written into the First Amendment—as the establishment clause, requiring the government to remain neutral concerning religion, and the free exercise clause, guaranteeing the right of all citizens to reach, hold, exercise, or change beliefs without government interference.

causing political and social brushfires ever since.

After the *Engel v. Vitale* decision, some complained that the Supreme Court had removed God from the classroom and that the ruling was anti-Christian and anti-American. Nevertheless, the court soon upheld two challenges to school prayers in Pennsylvania and Maryland. The first involved review of a Pennsylvania law that required the reading of at least 10 verses of the Bible at the start of each school day; a Maryland law called for Bible reading or the recitation of the Lord's Prayer.

When it became clear that the Supreme Court was not going to budge from its position barring school-sponsored prayer, 25 state legislatures adopted laws providing for a "moment of silence" at the beginning of each school day. These state statutes have led to a succession of Supreme Court decisions striking down laws whose "sole purpose" was to foster prayer in public schools.

Despite its strict stand against state-sponsored prayer in public schools, the Supreme Court has indicated in several decisions over the last decade that teaching about religion in public schools is constitutional. In addition, a number of Supreme Court and lower court decisions have supported a variety of religious liberty rights for students. For example, the Supreme Court has ruled that the Ten Commandments might be capable of being integrated into a curriculum, *Stone v. Graham*, 449 U.S. 39 (1980). The court also has said that schools may not forbid students acting on their own from expressing their personal religious beliefs and must give them the same right to engage in religious activity as students have to engage in other activities. In 1995, President Clinton issued a directive concerning religious liberty and the rights of students, and the importance of religion in the public schools (see pages 12–13).

In spite of the growing consensus about the current state of the law, many public school administrators and teachers remain confused about what kinds of religious expression are permissible in school. Even more confusion exists in the area of student-initiated prayer at graduation ceremonies. Seizing upon the current confusion surrounding school prayer, some members of Congress propose to amend the Constitution and modify the First Amendment's establishment clause. Rep. Ernest Istook Jr. (R-Okla.) has introduced the Religious Freedom Amendment, which he says is intended to address "a systematic campaign to strip religious symbols, references and heritage from the public stage." [A similar bill died in the previous congressional term because different sides could not agree on wording. Most conservative religious groups supporting the amendment did not want to return state-sponsored religion to public schools and opposed language that might lead school officials to be involved in religion. The amendment's proponents argued that their intent was to protect the right of students to practice their faith (presumably even in front of a captive audience).]

According to the ACLU, which strongly opposes Istook's measure, the

Christian Coalition has pledged $2 million to lobby Congress for passage of the bill. The amendment's real effect, according to the ACLU, would be to allow government officials to make decisions that favor particular faiths over others. The amendment also would make it easier for public funds to go to religious institutions through school vouchers and other programs. The amendment would thus pit religious groups against each other for public dollars. Religious groups, including the National Council of Churches, the American Jewish Congress, and the Joint Baptist Conference, citing such potential negative effects, have voiced their opposition to such an amendment. They and other opponents believe it amounts to no more than religious coercion and that the First Amendment, as is, fully protects student religious liberties. At the same time, state legislators have continued to introduce school prayer amendments to state constitutions. In West Virginia, State Sen. Randy Schoonover has proposed to amend the state constitution to allow two minutes of daily voluntary prayer in public schools. Opponents of the Schoonover bill are puzzled by the necessity to include voluntary school prayer in the state constitution. Even if they are enacted, these state measures face serious challenges in the courts.

School Facility Use

Judges have become more tolerant of the use of school facilities for religious activities that are not part of the school's curriculum. At one time, schools concerned with potential establishment-clause violations tended to bar student religious groups from using school facilities. Early court decisions on this issue upheld the schools' actions because allowing access would create an "impermissible appearance of official support of religion," *School District of Grand Rapids v. Ball*, 473 U.S. 373 (1985). Courts also feared that allowing

Religious Expression in Public Schools

In 1995, President Clinton directed Secretary of Education Richard W. Riley to provide every U.S. school district with a statement of principles addressing the extent to which religious expression and activity are permitted in public schools. This statement of principles resulted.

Student prayer and religious discussion: The establishment clause of the First Amendment does not prohibit purely private religious speech by students. Students therefore have the same right to engage in individual or group prayer and religious discussion during the school day as they do to engage in other comparable activities. For example, students may read their Bibles and other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable nondisruptive activities. Local school authorities possess substantial discretion to impose rules of order and other pedagogical restrictions on student activities, but they may not structure or administer such rules to discriminate against religious activity or speech.

Generally, students may pray in a nondisruptive manner when not engaged in school activities or instruction, and subject to the rules that normally pertain in the applicable setting. Specifically, students in informal settings, such as cafeterias and hallways, may pray and discuss their religious views with each other, subject to the same rules of order as apply to other student activities and speech. Students may also speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. School officials, however, should intercede to stop student speech that constitutes harassment aimed at a student or group of students.

Students may also participate in before or after school events with religious content, such as "see you at the flagpole" gatherings, on the same terms as they may participate in other noncurriculum activities on school premises. School officials may neither discourage nor encourage participation in such an event.

The right to engage in voluntary prayer or religious discussion free from discrimination does not include the right to have a captive audience listen or to compel other students to participate. Teachers and school administrators should ensure that no student is in any way coerced to participate in religious activity.

Graduation prayer and baccalaureates: Under current Supreme Court decisions, school officials may not mandate or organize prayer at graduation nor organize religious baccalaureate ceremonies. If a school generally opens its facilities to private groups, it must make its facilities available on the same terms to organizers of privately sponsored religious baccalaureate services. A school may not extend preferential treatment to baccalaureate ceremonies and may, in some instances, be obliged to disclaim official endorsement of such ceremonies.

Official neutrality regarding religious activity: Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the establishment clause from soliciting or encouraging religious activity and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content and from soliciting or encouraging antireligious activity.

Teaching about religion: Public schools may not provide religious instruction, but they may teach about religion, including the Bible or other scripture. The history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history of the United States and other countries all are permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature, and social studies. Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students.

Student assignments: Students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school.

Religious literature: Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as they do on non-school literature generally, but they may not single out religious literature for special regulation.

Religious excusals: Subject to applicable state laws, schools enjoy substantial discretion to excuse individual students from lessons that are objectionable to the student or the students' parents on religious or other conscientious grounds. School officials may neither encourage nor discourage students from availing themselves of an excusal option. ...

Released time: Subject to applicable state laws, schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation or penalize those who do not attend. Schools may not allow religious instruction by [anyone] on school premises during the school day.

Teaching values: Though schools must be neutral with respect to religion, they may play an active role with respect to teaching civic values and virtue and the moral code that holds us together as a community. The fact that some of these values are held also by religions does not make it unlawful to teach them in school.

Student garb: Students may display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Religious messages may not be singled out for suppression but rather are subject to the same rules as generally apply to comparable messages. When wearing particular attire, such as yarmulkes and head scarves, during the school day is part of students' religious practice, under the Religious Freedom Restoration Act schools generally may not prohibit the wearing of such items.

access would excessively "entangle" schools in religious affairs. As a result of these rulings, religious groups were placed at a distinct disadvantage to secular groups that were allowed to use the same facilities. Responding to these decisions, Congress passed the Equal Access Act (EAA) of 1984 to ensure that student religious groups would be on equal footing with secular groups. The act has withstood the scrutiny of the Supreme Court, which has ruled that allowing access to religious groups does not violate the establishment clause because there is no government endorsement of religion. If a school allows other noncurricular student groups to use its facilities, it must allow religious student groups to do so (but a school may keep out religious student groups if it keeps out all noncurricular student groups). *Westside Community Schools v. Mergens*, 496 U.S. 226 (1990). Despite the support of Congress and the courts, the EAA has had a limited effect on the firmly entrenched belief of some school officials and teachers that the First Amendment prohibits any form of religious expression on public school grounds. Students are often surprised to learn that they have the right to carry a Bible, wear a religious message on a T-shirt, and meet with other students to discuss their faith on school grounds. The Supreme Court also has ruled in *Rosenberger v. University of Virginia*, 115 S.Ct. 2510 (1995), that if a public university subsidizes other student publications, it cannot exclude a religious magazine.

School Vouchers

Many of the proponents of religion-oriented school instruction have turned their attention from influencing public school curricula to helping like-minded parents get their children into private religious schools. This brings the debate to the tricky issue of money. Supporters of private schools argue that they should be able to take the money that would be used to educate their children in public schools and apply it to the tuition charged by religious schools. This would be accomplished by a system of vouchers. The resulting controversy is not limited to the question of religious education; it is entangled with the larger question of school choice. Some

advocates of vouchers believe such a system should allow only parents in neighborhoods with subpar public schools to send their children to better public schools in other areas. It's not surprising that support for vouchers runs high in minority communities. The First Amendment comes into play with those voucher plans—including ones that have been tested in several states—that allow parents to use public funds at religious or private schools. Voucher opponents say proposals of this kind could result in large shifts of resources away from public education.

There are other problems associated with voucher systems. Test programs in Milwaukee and Cleveland have come under fire not only for violating the establishment clause of the First Amendment, but also for encouraging fraud among private schools competing for tax dollars.

In 1996, the National School Boards Association conducted a nationwide survey of school board members on such issues as vouchers and school prayer. Fewer than one-third supported a constitutional amendment allowing prayer in the public schools; only 31 percent supported voucher plans that permit parents to choose private and religious schools in addition to public schools. Only 20 percent said parents who send their children to private and religious schools should receive tuition tax credits from the government.

RFRA

Congress passed the Religious Freedom Restoration Act (RFRA) in 1993, responding to an unprecedented display of unity among diverse religious organizations. RFRA lowered the hurdle for plaintiffs who claimed that a government agency was imposing an excessive limitation on religious activities. Once a court determined that a government action had placed a substantial burden on religion, the state needed to show both that it had a com-

Supreme Court Establishment Clause Interpretations, 1947–97

1947 *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1, 29 (1947)
Everson was the first time that the Supreme Court determined what an establishment of religion was, with the justices unanimously supporting the principle that church and state should be separate (called strict separation). All the justices agreed with Thomas Jefferson that "the clause against establishment of religion by law was intended to erect a wall of separation between church and state." At the same time, they held that public money could be used to pay transportation costs for children to attend sectarian schools.

1962 *Engel v. Vitale*, 370 U.S. 421
The Court declared that a school prayer endorsed by the New York State Board of Regents was state-sponsored establishment of religion, in violation of the establishment clause. Prayer in public schools became a hot issue that continues today.

1971 *Lemon v. Kurtzman*, 403 U.S. 602, 612
With *Lemon*, the previous consensus began to erode, with the majority opinion repeatedly saying the establishment clause's meaning is unclear. The three-part *Lemon* test was developed to determine whether the establishment clause has been violated: For a law or government policy or practice not to do so, (1) it must have a secular purpose, (2) its principal effect must neither advance nor inhibit religion, and (3) it must not foster excessive government entanglement with religion.

1980 *Stone v. Graham*, 449 U.S. 39
The Court ruled that the Ten Commandments might be capable of being integrated into a curriculum.

1984 *Lynch v. Donnelly*, 465 U.S. 668, 687-689
Justice O'Connor wanted to refine the *Lemon* test with the endorsement test, which would focus on whether government actions endorse religion. She dropped *Lemon*'s excessive entanglement part and rephrased its purpose and effect tests, with her approach asking two questions: Is the government's purpose to endorse religion? Does the statute actually convey a message of endorsement?

1985 *Wallace v. Jaffree*, 472 U.S. 38, 109
The Court used the *Lemon* test to hold an Alabama silent prayer law unconstitutional because it had no secular purpose and was intended to advance religion. In a long dissent, Justice Rehnquist rejected the *Lemon* test in its entirety in a full-blown attack on its foundations.

1989 *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 660
Justice Kennedy proposes a coercion test, whose purpose is to clarify the border between what is government accommodation of religion and establishment of religion, with the implication being that accommodation is constitutional, while establishment is not. Under this test, government may not

(1) coerce anyone to support or participate in any religion or its exercise, or (2) give direct benefits to religion in such a degree as to establish religion or tend to do so.

1990 *Westside Community Schools v. Mergens*, 496 U.S. 226
While schools concerned with potential establishment-clause violations at one time tended to bar student religious groups from using school facilities, this decision upheld the Equal Access Act (EAA) of 1984, created to ensure that student religious groups would be on equal footing with secular ones. The Court held that allowing school-facility access to religious groups does not violate the establishment clause because there is no government endorsement of religion.

1992 *Lee v. Weisman*, 505 U.S. 577
In a case in which the Court might have rejected *Lemon* and the wall of separation, substituting the coercion test that appeared to allow government to support religion, the justices surprisingly voted 5–4 that graduation prayers violated the establishment clause, effectively stopping the accommodationist momentum.

1994 *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687
The Court struck down a special New York school district formed for disabled Satmar Hasidic Jewish children who would experience "panic, fear, and trauma" in the public school to which they would otherwise have to go on the grounds that such favoritism violated the establishment clause. Three justices concurred, however, that there was not a bit of evidence to show that any other religious group had been disfavored and that the establishment clause should not be used to repeal a national tradition of religious toleration.

1995 *Rosenberger v. Rector and Visitors of the University of Virginia*, 115 S.Ct. 2510
The Court held that the University of Virginia could not deny monies from its student activity fund to a religious group for publication expenses because doing so constituted viewpoint discrimination in violation of the group's free-speech rights.

1997 *City of Boerne, Texas v. Flores*, 117 S.Ct. 293
The 1993 Religious Freedom Restoration Act (RFRA), which had lowered the hurdle for plaintiffs who claimed that a government agency was imposing an excessive limitation on religion activities, was struck down by the Court, which held the act unconstitutional because the extensive reach of the legislation was disproportionate to the scope of the claimed injuries; the RFRA intruded both on the Court's authority to interpret the Constitution and on the sovereignty of the states.

1997 *Agostini v. Felton*, 117 S.Ct. 1997
In a 5–4 vote overturning two 1985 decisions and holding that the establishment clause is not violated when public school teachers provide Title I educational services in both sectarian and nonsectarian private schools during school hours. The Court held that publicly paid teachers may go into sectarian schools to provide instruction without running afoul of the principle of separation of church and state.

pelling government interest and that it had used the least restrictive means to further that interest. The law was criticized by other legal experts as an act of overreaching by Congress, in violation of the separation of powers.

The issue of RFRA's constitutionality was presented to a court after the archbishop of San Antonio sought to tear down an old church in Boerne, Texas, in order to build a larger facility. The city wouldn't allow the demolition, claiming that it would violate a local historic-preservation ordinance. The archbishop argued that the ordinance violated free-exercise rights protected under RFRA and took the city to court. This case reached the Supreme Court in the spring of 1997. The court held that RFRA was unconstitutional because the extensive reach of the legislation was disproportionate to the scope of the claimed injuries, *City of Boerne, Texas v. Flores*, 117 S.Ct. 293 (1997). A growing number of states are working on "state RFRAs" to keep alive its heightened burden on government in situations involving religious practice.

Reconciliation

As parents, educators, and others wrestle with the problems surrounding religion today, America remains a nation deeply committed to the freedom to choose in matters of faith without government interference. The most promising developments of recent years are the attempts to work out differences in religious beliefs through communication rather than confrontation.

The commitment by a number of religious groups to working out their differences has led to a series of public dialogues in a number of communities. These meetings have brought various stakeholders to the table, including conservative and moderate religious organizations, school administrators, teachers, and parents, as well as groups such as the Christian Legal Society, People for the American

More for Teachers . . .

For an award-winning analysis of the Supreme Court's interpretations of the establishment clause through 1994, and an accompanying teaching strategy, see *Update on Law-Related Education*, 18.2 (spring 1994): 14–31. Ordering information is available at (312) 988-5735, http://www.abanet.org/publiced, or E-mail at abapubed@abanet.org.

Way, the American Association of School Administrators, and the National Education Association. There are numerous examples of forums, which have been sponsored by various organizations. The success of such events has been due to the mutual recognition of the serious social damage that could result from prolonged antagonism. Such efforts are part of a series of steps taken in the last decade of the century to advance religious liberty. They show that the principles of the First Amendment can be used to find new solutions to contentious issues surrounding religious liberty. In June 1988, leaders representing many segments of American life signed the Williamsburg Charter, which addresses the dilemmas and opportunities posed by religious liberty in American public life. The charter calls for a renewed national compact as a foundation for forging agreement by both religious and nonreligious organizations.

Conclusion

Religious freedom is at the heart of this country's experiment with democracy. The continuing controversies are proof of continued passion for liberty of conscience, even as debates rage about whether religion receives sufficient attention from the media, educators, and the government. Disputes involving religious liberty reflect America's ambivalence about the limits of individual liberty. At present, the country's internationally recognized commitment to tolerance of all cultures and faiths is being tested and torn. The question to be answered is whether we can sustain this commitment to the religion clauses of the First Amendment into the next century. ♦

The Freedom Forum . . .

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newspapers, that news sources should be kept confidential, and that the media should be permitted to publish government secrets.

Inadequate Education?

The poll suggests cause for concern about how well Americans are educated about First Amendment topics. Only half of Americans say they ever had a class on the subject, and only 30 percent think that schools are doing an adequate job of educating youngsters in their rights. Few Americans are able to name all five of the First Amendment freedoms.

Americans Able to Name First Amendment Rights

Right	Percent
Speech	49
Religion	21
Press	11
Assembly	10
Petition	2

Three in 10 of those surveyed said they have found themselves in situations when they did not voice their opinion because they thought they might in some way be punished or penalized for doing so. While the majority of people do feel that they may express themselves without fear, it appears that a substantial minority feel otherwise. ♦

Barnyard Ballyhoo

Office dust-up gets beastly

Sometimes when he's at work, Memphis attorney George Rich claims to hear strange noises. Though the noises are similar to those of a pig or a mule, sometimes even a hyena, Rich says they are made by a creature with two legs, not four.

More than a year ago, Rich shared a practice with Gary Jewel. Since the partnership broke up, Rich maintains that Jewel has been trying to run him out of the office with the bestial cacophony, among other distractions.

He has filed suit in the state Chancery Court to decide how the former partners' debts and assets should be divided. Rich also seeks unspecified damages for intentional infliction of emotional distress.

Jewel claims he and his two assistants have merely been trying to foster a lighthearted atmosphere around the office. "We horse around a little bit," he says. "There are some animal sounds we make occasionally."

Both parties like the office and want to stay, though Jewel says Rich originally agreed to move. "He broke the partnership," Jewel says, adding that the issue of who goes could be decided simply by a coin toss.

"I can't see this going down to the court," Jewel says. "What's the judge going to do? Make me stand up and oink for him?"

Adapted from ABA Journal, *January 1998, p. 16.*

Muslim Students' Needs in Public Schools

Can public schools accommodate the religious needs of students?

Charles Haynes

Update on Law-Related Education, 22.1, 1998, pp. 17–21. © 1998 American Bar Association.

There are now millions of American Muslims. Within the next 20 years, Islam will become the second largest religion, after Christianity, in the United States. Worldwide, there are over one billion Muslims. Many American educators are finding it necessary to overcome the common lack of familiarity with Islam as growing Muslim communities across the nation express their needs and make their contributions in the public school environment.

Islam in America

There are records of Muslims in America as early as the 18th century, and there is evidence that settlers from Spain may have included persons of Muslim heritage before that. Archival materials indicate that many slaves brought to the Americas were Muslims. In the late 19th and early 20th centuries, significant numbers of Muslims began to migrate to the United States from the Middle East, despite restrictive and discriminatory immigration laws. From the middle of the 20th century on, Muslim immigrants arrived from other Muslim regions, such as South Asia, Africa, and Arab countries. Today, by some estimates, 14 percent of all immigrants entering the United States are Muslims.

According to the American Muslim Council in Washington, D.C., as many as 40 percent of the Muslims in the United States are African Americans whose families converted to Islam in the 20th century. This growing Muslim community is adapting to and flourishing in the American environment. Its vitality can be seen in the more than 1500 mosques and Islamic centers across the country.

American Muslims face a variety of challenges as they practice their faith in this pluralistic society, and they are meeting these challenges by becoming more organized and visible. Highly supportive of education and cooperation between parents and the schools, local and national Muslim organizations nevertheless have important issues to address regarding their communities' effective participation in public schools. Among these organizations is the Council on Islamic Education, a national, scholar-based resource organization that provides information to teachers, education officials, and textbook publishers.

See the Teaching Strategy for this article on page 41.

Islamic Beliefs and Practices

Islam means "peace through submission to God," and a *Muslim* is "one who submits to the will of God." Muslims recognize a continuous line of prophets and revelations, beginning with Adam and extending through Noah, Abraham, Moses, and Jesus, ending with Muhammad as the last prophet, who completed God's message to humankind. The Qur'an is the sacred scripture of Islam, which Muslims hold to be the literal word of God revealed to Muhammad through the angel Gabriel.

Muhammad's role, in addition to being the vessel of revelation, is viewed as providing a model behavior in accord with the guidance given in the Qur'an. Thus, the two sources of the principles and practices that make up a Muslim way of life are the Qur'an and Muhammad's example or precedent, recorded in various authentic sources. Interpretation and application of these two sources constitute the evolving body of Islamic law. This includes guidelines affecting prescribed modes of worship, family, social and financial relations, diet and dress, among others.

The basic practices of Muslims are identified as the "Five Pillars," acts of

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worship with broad implications for individual and communal life:

1. Acceptance and repetition of the creed: "There is no god but God, and Muhammad is the prophet of God." This confession of faith and its repetition constitute the first step in being a Muslim. The concept of unity stated in the creed is central to the Islamic model for spiritual and social life.
2. Prayer: Every pious Muslim sets aside time each day for five acts of devotion and prayer at dawn, at midday, at midafternoon, at sunset, and after nightfall.

   Friday is the special day of community prayer. The faithful assemble in the *masjid* (mosque) for prayers.
3. Almsgiving: Muslims who have the means to do so are required to give to those who are less fortunate. Almsgiving is considered an act of worship both for offering thanks to God for material well-being and as purification of wealth.
4. Fasting during the sacred month of Ramadan: During Ramadan, all healthy Muslims are required to abstain from food, drink, and conjugal relations from dawn to sunset. The first day of the next month is *Eid Al-Fitr*, "the Festival of Ending the Fast." This festival is a joyous celebration.
5. Pilgrimage: Every Muslim hopes to be able to make the *Hajj* (pilgrimage) to the holy city of Makkah, in Saudi Arabia, at least once in a lifetime. Pilgrimage takes place during *Dhu al-Hijjah*, the twelfth month of the lunar Islamic calendar.

   The pilgrimage rites commemorate the Abrahamic heritage of Ka'bah and other sites. The Ka'bah is the focal point of Muslims' daily prayer and a symbol of unity and continuity of faith. On the tenth of *Dhu al-Hijjah*, Muslims celebrate *Eid al-Adha*, the Festival of the Sacrifice. Muslims around the world observe this holiday simultaneously with the pilgrims at Makkah.

Among the practices required by Islamic law that distinguish Muslims wherever they live are teachings concerning modest dress for Muslim men and women in public, as well as required decorum concerning mixing together of the two sexes and standards of personal hygiene. The Muslim diet excludes alcohol and pork products in any form and requires certain procedures in the slaughter of animals.

Students' Religious Needs and the First Amendment

The Council on Islamic Education (CIE) and other organizations have identified the basic needs and requirements of Muslim students in public schools, as they seek to uphold their faith. They also raise vital church-state issues public schools are now struggling to resolve. These organizations appeal to religious freedom. In the American context, of course, this is a reference to the free exercise clause of the First Amendment.

Local and national organizations have urged public schools to make accommodations for Muslim students so that they may practice their faith. These accommodations, already implemented to some degree in many states, help practicing Muslims attending public schools meet very real religious needs. However, some schools, as state-sponsored institutions, may find some of the identified accommodations difficult to make.

At issue is a question that runs through public education history: To what extent may the state accommodate the needs and requirements of religious communities represented in schools? Or, in a broader context, *when does the establishment clause of the First Amendment prohibit the state from accommodating free exercise claims of religious groups?*

The requirements of religious belief protected under the free exercise clause of the First Amendment can come into tension with the establishment clause when the practice of one's belief is conducted in a state institution such as a public school. The requirement not to hinder belief must be balanced by a sensitivity not to provide inadvertent state support for a particular belief. Some Americans argue that state support is valid if it is nonpreferential, while others argue that no state support is allowable.

Many accommodations may be easily made by sensitive and thoughtful public school administrators without raising constitutional questions. Muslim students should be able to wear modest clothing or refrain from attending social activities without violating school policies, for example.

Students in most public schools are routinely allowed excused absences for religious holidays. Such a policy is generally considered a reasonable accommodation to the religious needs of a religiously diverse school population. Accordingly, several state and local districts with large Muslim populations have placed Muslim holidays alongside other religious holidays on the school calendars for teachers' information and planning.

Many schools have excusal policies that allow students to opt out of limited portions of the curriculum that offend their religious beliefs. If focused on a specific discussion, assignment, or activity, such requests should be routinely granted in order to strike a balance between the students' religious freedom and the school's interest in providing a well-rounded education. The easiest requests to grant are accommodations focused on activities connected with such holidays as Halloween or Valentine's Day. If opt-out requests cover significant academic portions of the curriculum, however, schools may be unable to excuse students on educational grounds.

Physical education presents a number of difficulties, especially in school districts that require coeducational

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Muslim Students' Religious Needs

Terminology

Those who practice the faith of Islam are known as Muslims, literally "those who submit" to God. The spelling *Muslim* is considered more accurate than *Moslem*, and the term is preferable to *Islamic* when referring to people. The terms *Muhammadanism* and *Muhammadan* are inappropriate as references to the faith and its adherents, respectively.

The adjective *Islamic* should be used only for what pertains to the religion itself (Islamic beliefs, Islamic law, etc.), while *Muslim* should be used to denote the works and acts of Muslims or groups of people and their institutions (such as Muslim women or men, Muslim population, Muslim countries or civilization, Muslim art, etc.).

Fulfilling Religious Obligations

Muslims become thoroughly accountable for fulfilling religious obligations upon reaching puberty, although many Muslim children learn and perform the various duties at an earlier age. Muslim students in public schools may express a desire to adhere to certain religious principles or fulfill certain religious requirements. It is important to note that many of the religious needs outlined here can be met through the individual initiative of students and/or their parents, in which the main accommodation by the school lies in creating a supportive atmosphere of tolerance and respect for freedom of individual choice. Over the past 10 years, many schools and school systems have found practical and mutually acceptable solutions to meeting the needs outlined below.

Daily Worship *(Salah)*

Muslims engage in formal worship or prayer (*salah* in Arabic) five times daily. Depending upon seasonal time changes and school schedules, one or two of the worship times (midday and afternoon) may fall during typical school hours, and thus some suitable arrangement should be made for students who wish to fulfill this obligation. Teachers should provide Muslim students who are conscientious about observing their prayers with an unused area for a few minutes during lunchtime or afternoon break for this purpose.

Suggestion: Allow students to conduct their daily prayers in an empty room on campus during lunchtime and/or breaks.

Friday Congregational Worship *(Jumah)*

For Muslims, Friday is a day of congregational worship. The Friday prayer takes the place of the midday worship performed on other days and occurs close to most students' lunch hour. The sermon and worship typically require 30 to 45 minutes to complete. Some Muslim students may wish to make arrangements to leave campus temporarily to attend congregational prayers at a local *masjid* (mosque), while others may ask to use an empty classroom to conduct the worship service themselves.

Suggestions: Allow students to perform the Friday worship in an empty room on campus during lunchtime.

Allow students to be excused for the time required to attend a local *masjid* and to make up any missed work.

Dietary Needs

The Qur'an specifies which foods are lawful and unlawful for Muslims to eat. Islam prescribes a particular method for slaughtering lawful animals for meat, designed to minimize suffering for the animal. The meat of lawful animals, such as cows, goats, and chickens, among others, that are slaughtered in this prescribed manner is commonly designated *halal*, or lawful. Seafood is exempt from rules for slaughter.

The Qur'an states that the food of Jews and Christians is lawful for Muslims, provided that certain conditions of method, cleanliness, and purity have been fulfilled. Some Muslims eat meat of lawful animals available commercially in American society, while others, believing the above-mentioned conditions have not been met, eat only meat from animals that have been slaughtered in the prescribed way by a Muslim butcher.

The meat of swine is prohibited in Islam. Muslims do not eat pork or foodstuffs made with pork derivatives such as gelatin, lard, and certain enzymes. Examples of such foods include pepperoni pizza, pork hot dogs, and certain brands of refried beans, tortillas, gelatin desserts, candy, and marshmallows, unless these contain kosher gelatin. Consumption of alcoholic beverages is prohibited in Islam. Muslims avoid foodstuffs prepared with alcohol as well.

Suggestions: Muslim students can be asked to bring *halal* meat dishes for parties, picnics, and potlucks.

Vegetarian alternatives can be provided for Muslim students who only eat meat available directly from Muslim sources.

Baked goods made with vegetable shortening should be requested for such events in order to avoid products or foods containing lard or animal shortening. Teachers should be made aware of gelatin as a source of pork derivatives when they provide treats.

Fasting *(Sawm)*

During the Islamic month of Ramadan (a lunar month of 29 or 30 days), Muslims abstain from all food and drink from dawn to sunset. This religious duty is known as *sawm* in Arabic. Many Muslim students observe the fast.

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Consequently, they will be unable to participate in meals or refreshments during the daylight hours. In addition, they will not be able to engage in heavy physical exertion often required in physical education classes during this time.

Suggestions: If students eat lunch in a common cafeteria, Muslim students should be allowed to spend lunchtime during Ramadan fasting in an alternative location, such as a study hall or library.

Physical education teachers should provide alternatives to rigorous physical exercise during Ramadan.

Additional Issues

Mixing of the Sexes

As a general principle, Muslim men and women minimize casual mixing of the sexes in society, emphasizing strong adherence to the marital bond. Dating, mixed-sex dancing, or any form of premarital intimacy are not allowed in Islam. Consequently, conscientious Muslim students are likely not to participate in proms and dances or similar events. In terms of mixing in physical education classes, segregated sports and activities are preferred by Muslim parents. This is especially true for swimming classes.

Suggestions: Well-meaning school personnel should avoid putting unnecessary stress on youngsters by encouraging them to participate in what they consider "normal" socializing activities such as dances or giving the impression that a student who is not involved in these activities is antisocial or socially immature and needs to be coerced into participation.

Modesty and Muslim Modes of Dress

Islam places great emphasis on modesty in dress and behavior for both sexes. Men and women are expected to dress in clothing that does not reveal the features of the body. As part of their Islamic dress, many Muslim women and girls wear what is termed *hijab*, commonly used in reference to a scarf or head covering, but more broadly meaning appropriate covering of the entire body except for hands and face.

Physical education classes can pose certain problems for Muslim children, since such courses typically require students to wear shorts and tank tops. Such attire is not permissible for Muslim women and girls, and men and boys must wear shorts that reach at least to the knees.

Muslims of both sexes are required to be modest even in front of persons of the same sex. Therefore, situations requiring nudity in front of others, such as using the toilet and taking showers in an open area devoid of partitions or curtains, present serious problems for a Muslim child.

Suggestions: During P.E. activities allow female Muslim students to wear long-sleeved T-shirts and sweat pants, instead of tank tops and shorts, and male students to wear long shorts. Also, Muslim girls who observe *hijab* must be allowed to wear appropriate modest attire and head covering in mixed classes. Moreover, swimwear that covers more of the body than most swimsuits should be allowed for Muslim students.

Islamic Holidays

Muslims observe two major religious holidays during the year. *Eid al-Fitr* (Festival of Ending the Fast) is the celebration that occurs after Ramadan, while *Eid al-Adha* (Festival of the Sacrifice) is the celebration that coincides with the end of the *Hajj*. On the day of *Eid*, a worship service is held in the morning at a local *masjid* or designated site. Afterwards, Muslims visit each other's homes to celebrate, share meals, and exchange gifts. These Muslim holidays are of similar importance and significance to Muslims as are Christmas and Easter to Christians and Hanukkah and Passover to Jews.

Eid celebrations (like other important dates in Islam) occur within the Islamic lunar calendar and thus take place roughly eleven days earlier each year in relation to the standard Gregorian calendar. Schools can consult a local *masjid* for information on the *Eid* dates each year.

Suggestions: Muslim students should be given excused absences to participate in the two major religious holidays in Islam.

School officials and teachers are requested not to schedule standardized testing or exams on these holidays and to allow for makeup time on important assignments so that Muslim students can avoid any adverse effects upon their academic efforts.

Curriculum Issues

Teaching About Religions

Instructional materials and classroom activities should adhere to the civic framework and approaches to teaching about religion. As it is very common for such materials to contain major errors and misconceptions that contradict the guidelines for accurate and authentic portrayal of Islam, Muslim students should be allowed the opportunity to prepare research reports and state their opinions regarding errors they have identified in mandated material. (These guidelines are described in detail in Chapter 7, Haynes and Thomas, eds., *Finding Common Ground: A First Amendment Guide to Religion and Public Education*, The Freedom Forum First Amendment Center, 1994.)

Art/Art History

Some aspects of Western culture are viewed with reticence by Muslims, as they differ from Islamic values and principles. For example, much of Western art focuses on

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the human form, and nudes are a prominent component of paintings. The concept of modesty in Islam makes viewing such works a strange exercise for some Muslims, though doing so may seem quite ordinary for others. Moreover, the emphasis on the human form appears to reflect a human-centered view of the world rather than the God-centered one found in Islam and to contradict the injunctions against representative art to which many Muslims adhere.

Dance

After the age of puberty, classes necessitating mixed dancing are not appropriate for Muslim students, whether cultural or other types of dances are involved. There are varying views among Muslims about single-sex folk or cultural dancing for older children. Some Muslims also disapprove of music. It is desirable to give Muslim students the opportunity to opt out or participate in an alternative activity if they so choose.

Drama

Drama classes or exercises involving performance of scenes from the Nativity or acting as deities, gods, or goddesses of mythology may be objectionable to Muslims. Other dramatic roles and classroom role-plays are generally acceptable, as long as the concerns regarding modest dress, mixing of the sexes, and physical contact are taken into consideration.

Field Trips/Camping

Regarding school outings, Muslim parents may not allow participation in overnight mixed-sex outings, though some would permit single-sex outings of similar nature. Day-long field trips typically meet with approval. Organizers of such events should keep in mind the needs of Muslim students, such as allowing time for worship during breaks (Islamic worship accommodates travel with increased flexibility), allowing them to gracefully opt out of communal experiences involving prohibited foods, the need for privacy in showers and bathrooms, and appropriate forms of interaction between boys and girls.

From Teaching About Islam and Muslims in the Public School Classroom: A Handbook for Educators, *1995, Council on Islamic Education, 9300 Gardenia St., #B-3, Fountain Valley, CA, 92708; (714)839-2929.*

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P.E. classes. Here the public school's interest in developing a particular physical education curriculum may come into conflict with religious practices of Muslims and others.

More difficult still is the question of whether the state should construct separate, private showers or provide enclosed toilets. Since such accommodations would involve spending tax money to meet the needs of a particular religious group, some will argue that the public schools are prohibited by the establishment clause from making these changes. Others might appeal to the free exercise clause, claiming that by not providing these facilities the state is forcing Muslims to choose between public education and obedience to the strictures of their faith. Here again, a third position might be that the schools are not required to provide such facilities but may do so without "establishing" religion, especially if schools provide a secular reason for doing so that benefits many students, such as recognizing the possible benefit of a privacy option for any student who so chooses. For schools with large Muslim populations, this last position may prove the only practical alternative.

Religious dietary restrictions have led to requests concerning the labeling and preparation of food. Meeting these requests may raise First Amendment, as well as practical, questions for some school officials. Schools, especially those with few Muslim students, may resist investing the time and money required to make these accommodations. And it is unlikely that the courts will compel school cafeterias to take into account the religious requirements of all students. Nevertheless, some schools do label food and provide a variety of selections in an effort to accommodate the health, dietary, and, in some cases, religious needs of their students.

Two accommodations concern the obligation to pray. Excusal for Friday prayer off campus may present some practical problems for class scheduling, but there should be no legal barrier if it is construed as a "released time" program. In *Zorach v. Clausen* (1952), the Supreme Court ruled that schools may release students during school hours to participate in off-campus religious programs.

Schools may find it more difficult to excuse students for 15 minutes of afternoon prayer in a designated area. Since the time for prayer is somewhat flexible (mid-afternoon), schools may expect students to find time in their schedule to pray without interrupting class time (this may be possible only at the high school level). Public schools will certainly be challenged on constitutional grounds if a particular area of the school is designated as a place for prayer. The most an administrator may be able to do is to indicate what rooms, if any, are available to students for study or other activities between classes.

As reflection shows, questions involving religious needs are challenging but not insurmountable—especially if practical and constitutional solutions are sought in light of the promise of American pluralism and the principles that lie behind the American system of religious liberty. ♦

Developing Standards for Constitutional Change

Standards can provide guidelines for thinking about proposed amendments to the Constitution.

Citizens for the Constitution (CFTC)

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A Note to Teachers: Portions of this article have been adapted for use with the strategy on page 44. See that strategy for these materials, which can be reproduced for classroom use: a compendium of constitutional amendments, a listing of the eight standards discussed in this article, and a web site where the constitutional amendment proposals considered by the 104th and 105th Congresses can be found. Also see the strategy on page 48.

No newly proposed constitutional amendment has been adopted since 1971. Nonetheless, there has been a sudden rash of proposed amendments that have moved farther along in the process than ever before and that, if enacted, would revise fundamental principles of governance such as free speech and religious liberty, the criminal justice protection contained in the Bill of Rights, and the methods by which Congress exercises the power of the purse. Within the last few years, five proposed constitutional amendments—concerning a balanced budget, term limits, flag desecration, campaign finance, and procedures for imposing new taxes—have reached the floor of the Senate, the House, or both bodies. Two of these—the balanced budget amendment and the flag desecration amendment—passed the House, and a version of the balanced budget amendment twice failed to win Senate passage by a single vote. Still other sweeping new amendments—including a "victim's rights" amendment, a "religious equality" amendment, and an amendment redefining United States citizenship—have considerable political support.

There are many explanations for this new interest in amending the Constitution. Some Republicans, in control of both Houses of Congress for the first time in several generations, want to seize the opportunity to implement changes that many of them have long favored. Some Democrats, frustrated by a political system they view as fundamentally corrupted by large campaign contributions, want to revisit the relationship between money and speech. Some members of both parties have blamed what they consider to be the Supreme Court's judicial activism for effectively revising the Constitution, thereby necessitating resort to the amendment process to restore the document's original meaning.

Unfortunately, however, very little attention has been devoted to the wisdom of engaging in constitutional change, even to advance popular and legitimate policy outcomes. The Citizens for the Constitution (CFTC) believes that the plethora of proposed amendments strongly suggests that the principle of self-restraint that has marked our amending practices for the past two centuries may be in danger of being forgone.

There are several good reasons for attempting to reaffirm this self-restraint. Restraint is important because constitutional amendments bind not only our own generation, but

Article V of the U.S. Constitution

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by Congress.

Reprinted with permission of The Century Foundation/Twentieth Century Fund, New York; these standards will appear in spring 1998 as "Great and Extraordinary Occasions": Developing Standards for Constitutional Change. *For more information, contact the publisher at 1755 Massachusetts Avenue, NW, Washington, DC 20036, www.citcon.org.*

future generations as well. Constitutional amendments may entrench policies or practices that seem wise now, but that end up not working in practice or that reflect values that become no longer widely shared. Contested policy questions should generally be subject to reexamination in light of the experience and knowledge available to future generations. Enshrining a particular answer to these questions in the Constitution obstructs that opportunity.

Our experience with three previously proposed amendments, one that was adopted and later repealed, and two others that moved far along in the process but were not adopted, serve to illustrate these points:

First, when the Prohibition Amendment was adopted in 1919, many Americans thought that it embodied sensible social policy. Yet within a short time, there was broad agreement that the experiment had failed, in part because enforcing it proved enormously expensive in dollars and social cost. Had prohibition advocates been content to implement their policy by legislation, those laws could have been readily modified or repealed when the failure became apparent. Instead, the country had to undergo the arduous and time-consuming process of amending the Constitution to undo the first change. This is an experience the CFTC is not eager to see repeated.

The second example might have had far more serious consequences. On the eve of the Civil War, both Houses of Congress adopted an amendment that would have guaranteed the property interest of slaveholders in their slaves and would have forever prohibited repeal of the amendment. Fortunately, the proposed amendment was overtaken by events and never ratified by the states. Had it become law, the result would have been a constitutional calamity.

Finally, in our own time, there is the failed effort to add to the Constitution an Equal Rights Amendment, prohibiting denial or abridgment of rights

Historical Perspective

When the Constitution's framers met in Philadelphia, they decided to steer a middle course between establishing a constitution that was so fluid as to provide no protection against the vicissitudes of ordinary politics, and one that was so rigid as to provide no mechanism for orderly change. An important part of the compromise they fashioned was embodied in Article V.

The old Articles of Confederation could not be amended without the consent of every state—a system that was widely recognized as impractical, producing stalemate and division. Accordingly, Article V provided for somewhat greater flexibility: The new Constitution could be amended by a proposal adopted by two-thirds of both Houses of Congress or by a convention called by two-thirds of the states, followed in each case by approval of three-fourths of the states.

In the ratification debate that ensued, Article V played an important role. The new, more flexible amendment process served to reassure potential opponents who favored adding a bill of rights or who worried more generally that the document might ultimately prove deficient in unanticipated ways. It also reassured the Constitution's supporters by making it more unlikely that a second constitutional convention would be called to undo the work of the first.

Precisely because the legal constraints on the amendment process had been loosened somewhat from those contained in the old Articles, many of the framers also believed that the legal constraints should be supplemented by self-restraint. Although the new system made it legally possible to change our foundational document even when there was opposition, the framers believed that even dominant majorities should hesitate before using this power. As James Madison, a principal author of both the Constitution and the Bill of Rights, argued in Federalist 49, the constitutional road to amendment should be "marked out and kept open" but should be used only "for certain great and extraordinary occasions."

For the first two centuries of our history, this reliance on self-restraint has functioned well. Although over 11,000 proposed constitutional amendments have been introduced in Congress, only 33 of these have received the requisite congressional supermajorities, and only 27 have been ratified by the states. The most significant of these amendments, accounting for half of the total, were proposed during two extraordinary periods in American history—the period of the original framing, which produced the Bill of Rights, and the Civil War period, which produced the Reconstruction amendments. (The Twenty-seventh Amendment, relating to changes in congressional compensation, was part of the original package of amendments proposed by the first Congress but was not ratified by the states until 1992.) Aside from these amendments, the Constitution has been changed only 13 times.

Most of these 13 amendments either expanded the franchise or addressed issues relating to presidential tenure. Only four amendments have ever overturned decisions of the Supreme Court, and the only amendments not falling within these categories—the Prohibition Amendments—also provide the only example of the repeal of a previously enacted amendment.

on account of sex. Within three months of congressional passage in 1972, 20 states had ratified the amendment. Thereafter, the process slowed, and even though Congress extended the deadline, supporters ultimately fell short of the three-fourths of the states necessary for ratification. The struggle for and against ratification produced much dissension and consumed a great deal of political energy. Yet today, even some of the amendment's former supporters believe that the amendment was not necessary. Moreover, the amendment would have added to the Constitution a controversial and broadly worded provision of uncertain and contested meaning, with the Supreme Court given the unenviable job of providing its content. Instead of years of judicial wrangling concerning its application, we have seen Congress pass ordinary legislation, and the Court engage in the familiar process of explicating existing constitutional text, to achieve many of the goals of the amendment's proponents. This process has been more sensitive and flexible, while also less contentious and divisive, than what we could have expected had the amendment become law.

Restraint is also important in order to preserve the Constitution as a symbol of our nation's democratic system and of its cherished diversity. In a pluralistic democracy, in which people have many different religious faiths and divergent political views, maintaining this symbol is of central importance. The Constitution's unifying force would be destroyed if it came to be seen as embodying the views of any temporarily dominant group. It would be a cardinal mistake to amend the Constitution so as to effectively "read out" of our foundational charter any segment of our society.

The Constitution's symbolic significance might also be damaged if it were changed in order to control political outcomes with the detailed specificity of an ordinary statute. The Constitution's brevity and generality serve to differentiate it from ordinary law and so allow groups that disagree about what ordinary law should be to coalesce around the broad principles it embodies.

Finally, restraint is necessary because proposed amendments to the Constitution often put on the table fundamental issues about our character as a nation and so bring to the fore the most divisive questions on the political agenda. Two centuries ago, James Madison warned of the "danger of disturbing the public tranquility by interesting too strongly the public passions" through proposed constitutional change. It is not only unwise to trivialize the Constitution by cluttering it with measures embodying no more than ordinary policy, it is also risky to lightly reopen basic questions of governance. Occasional debates about fundamental matters can be cleansing and edifying, but no country can afford to argue about these issues continuously. Our ability to function as a pluralistic democracy depends upon putting ultimate issues to one side for much of the time so as to focus on the quotidian questions of ordinary politics. As Madison argued shortly after the Constitution's drafting, changes in basic constitutional structure are "experiments ... of too ticklish a nature to be unnecessarily multiplied."

None of this is to suggest that the Constitution should never be amended or that its basic structural outlines are above criticism. There have been times in our history when arguments for restraint have been counterbalanced by the compelling need for reform. Some individuals may believe that this is such a time, at least with regard to particular issues, and if they do, there is nothing illegitimate about urging constitutional change.

Some constitutional amendments are designed to remedy perceived judicial misinterpretations of the Constitution. Some earlier constitutional amendments, for example, the Eleventh Amendment, making states immune from being sued in federal court, and the Sixteenth Amendment, authorizing an income tax, fall into this category. There is nothing per se illegitimate about amendments of this sort, although here, as elsewhere, their supporters need to think carefully about the precise legal effect of the amendment in question and about how the amendment will interact with other, well-established principles of constitutional law.

More generally, advocates of amendments of any kind should focus not only on the desirability of the proposed change but also on the costs imposed by attempts to achieve that change through the amendment process and through the available alternatives. In the standards that follow, the CFTC proposes some general guidelines for how to think about these matters. We do not pretend that the standards can be mechanically applied. If the circumstances are extraordinary enough, all of these warnings might be overcome. Nor do we imagine that the standards alone are capable of resolving all disputes about currently pending proposals for constitutional change. We ourselves are divided about some of these proposed amendments, and no general standards can determine the ultimate trade-offs among the benefits and costs of change in individual cases.

Instead, the CFTC's hope is that the standards will draw attention to some aspects of the amending process that have been ignored too frequently, provide some guidelines for when resorting to it is appropriate, and suggest a process that will ensure all relevant concerns are fully debated.

At the very moment when this country was about to embark on the violent overthrow of a prior, unjust constitutional order, even Thomas Jefferson, more friendly to constitutional amendments than many of the founders, warned that "governments long established should not be

changed for light and transient causes." In the calmer times in which we live, there is all the more reason to insist on something more before overturning a constitutional order that has functioned effectively for the past two centuries. The standards that follow attempt to guide the inquiry into whether such causes exist and how to respond to them.

Standards With Commentary

The following abridged commentary briefly explains the CFTC standards. Note that they alone cannot determine whether any amendment should be adopted or rejected. Instead, they are designed to raise concerns that should be carefully weighed against the perceived desirability of the changes embodied in proposed amendments. The full text of the standards with commentary are available from Citizens for the Constitution at The Century Foundation/Twentieth Century Fund, 1755 Massachusetts Avenue, NW, Washington, DC 20036, or at www.citcon.org.

1. Constitutional amendments should address matters of more than immediate concern that are likely to be recognized as of abiding importance by subsequent generations.

James Madison, one of the principal architects of Article V of the Constitution, which contains the amendment procedures, cautioned against making the Constitution "too mutable" by making constitutional amendment too easy. He insisted that any constitutional amendment command not only majority, but supermajority support. Implicit in Madison's caution is the view that stability is one of the Constitution's key virtues and that excessive change will undercut one of the main reasons for having a Constitution in the first place. Thus, the Constitution should not be amended solely on the basis of short-term political considerations. Of course, no one can be certain whether future generations will come to see a policy as merely evanescent or as truly fundamental. Still, legislators have an obligation to do their best to avoid amendments that are no more than part of a momentary political bargain, likely to become obsolete as the social and political premises underlying their passage wither or collapse. To be enduring, amendments, as the Constitution itself, should be cast in general language, with exceptions being made only when specificity is required, such as in the Twenty-second Amendment, which changed the presidential inauguration date.

2. Constitutional amendments should not make our system less politically responsive except to the extent necessary to protect individual rights.

Of the 27 constitutional amendments, 17 either extend the franchise to new groups or protect the rights of vulnerable individuals such as criminal defendants and religious and political minorities. There is an obvious tension between these twin goals of majority rule and individual protection—a tension that this standard does not seek to resolve. In a constitutional democracy, most policy questions should be decided by officials elected by a majority of the people who will be affected by the policies in question. It follows that the Constitution's main thrust should be to ensure that our political system is more, rather than less, democratic. The Constitution guarantees democratic processes precisely so that the preferences of the people can be vindicated through ordinary legislation, which, under some circumstances, may be possible only through the enactment of amendments that eliminate constitutional barriers to its passage. Such was the case in the amendments enabling both our federal income tax and wide-sweeping civil rights legislation.

3. Constitutional amendments should be utilized only when there are significant practical or legal obstacles to the achievement of the same objectives by other means.

The force of the Constitution depends on the ability to see it as something that stands above and outside day-to-day politics. The very idea of a constitution turns on the separation of the legal and the political realms. It is a perversion of the Constitution's great purposes to use the amendment process instead of the legislative process, which allows the enactment of ordinary laws that are better suited to the goals of groups proposing popular changes. The more the Constitution is filled with specific directives, the more it resembles ordinary legislation; and the more the Constitution looks like ordinary legislation, the less it looks like a fundamental charter of government, and the less people will respect it.

A second reason for forgoing constitutional amendments when their objectives can otherwise be achieved is the greater flexibility that political solutions have to respond to changing circumstances over time. Amendments that embody a specific and perhaps controversial social or economic policy allow one generation to tie the hands of another, entrenching approaches that ought to be more easily revisable by future generations in light of their own circumstances. Such amendments convert the Constitution from a framework of governing into a statement of contemporary public policy. For these reasons, advocates of a constitutional amendment should make certain that they have exhausted every other means of political redress for a problem before they seek to solve it by amending the Constitution. History counsels that the Constitution should continue to be altered sparingly and only as a last resort, and only amendments that are absolutely necessary should be proposed and enacted.

4. Constitutional amendments should not be adopted when they would damage the cohesiveness of constitutional doctrine as a whole.

Because the Constitution gains much of its force from its cohesiveness as a whole, it is vital to ask whether an amendment would be consistent with mainstream constitutional doctrine or would create an anomaly in the law. This is especially likely to happen when the proposed amendment is offered to overrule a Supreme Court decision, although the danger exists in other circumstances as well.

To be sure, every amendment changes constitutional doctrine. That is, after all, the function amendments serve. Difficulties occur when the change has the unintended consequence of failing to mesh with aspects of constitutional doctrine that remain unchanged. This problem arises most often when framers of amendments focus narrowly on specific outcomes, without also thinking more broadly about general legal principles. It does not arise when whole areas of constitutional law are reformulated. For example, the Sixteenth Amendment, permitting Congress to enact an income tax, was necessitated by the Court's ruling in *Pollock v. Farmers Loan & Trust Co.*, 157 U.S. 429 (1895), that a specific limitation on the taxing power in the Constitution precluded a tax on income. That provision was grounded in our history as colonies and was included to ensure that each state would pay taxes to the national government only in proportion to its elected representatives, regardless of its wealth. This approach is inconsistent with a tax based on the incomes of the individuals and corporations in each state.

The Sixteenth Amendment reflected a repudiation of the framers' original decision and is precisely the kind of broad change in policy for which the amendment process was designed. The amendment did not create an anomalous exception to other principles in the Constitution.

It does not follow, however, that an amendment must always overrule an entire body of law in order to comport with this standard. Although the *Dred Scott* decision was embedded in the law of property, Congress did not revisit all of property law when it enacted the Thirteenth Amendment, and its failure to do so in no way damaged the coherence of constitutional doctrine.

5. Constitutional amendments should embody enforceable, and not purely aspirational, standards.

The Constitution is not a theoretical enterprise. It is a legal document that spells out a coherent approach to government power and processes while also guaranteeing our most fundamental rights. More than two centuries of experience underscore the wisdom of continuing with that approach. The addition of purely aspirational statements, designed for solely symbolic effect, would lead interest groups to attempt to write their own special concerns into the Constitution. It follows that advocates of amendments should think carefully about how the amendment will be enforced. Everyone, regardless of social station or political rank, must follow the law. A provision susceptible of being ignored because no one can feasibly require its observance permits the kind of executive or legislative discretion that our founders wished to control. A provision that may be willfully ignored when those charged with observing it find the result inconvenient or undesirable undermines the rule of law, the government's own legitimacy, and the Constitution's special stature in our society.

6. Proponents of constitutional amendments should attempt to think through and articulate the consequences of their proposals, including the ways in which the amendments would interact with other constitutional provisions and principles.

When the Constitution was drafted, the delegates to the Constitutional Convention regarded the new document as a unified package. Much energy was directed to considering how the various parts of the Constitution would interact with one another and to the political philosophy expressed by the document as a whole. The amendment process is necessarily much more ad hoc. Consequently, proponents of new amendments need to be especially careful to think through the legal ramifications of their proposals, explaining, for example, how their proposals might shift the balance of shared and separated power between the branches of the federal government or might affect the distribution of responsibilities between the federal and state governments. They should also explore how their proposals mesh with the Constitution's fundamental commitment to popular sovereignty and to the guarantees of liberty, justice, and equality. Finally, they should decide whether the principles they seek to establish will apply in contexts beyond those immediately affected by the amendments.

7. To ensure full and fair debate as part of the constitutional amendment enactment process, procedures must be designed and used.

The requirement that amendments must be approved by supermajorities makes it more difficult to amend the Constitution than to enact an ordinary law. In theory, this requirement should produce a more deliberate process, which, in turn, should mean that the issues are more fully ventilated in Congress. Unfortunately, reality does not always comport with theory. Congress should adopt procedures to ensure that full consideration is given to all proposals to amend the Constitution before votes are taken either in

committee or on the floor. For most amendments, there are two types of questions: (a) the policy questions, which include whether the basic idea is sound and whether the amendment is the type of change that belongs in the Constitution, and (b) the operational questions, including whether there are problems in the way that the amendment will work in practice. Generally, it is appropriate for Congress to hold at least two sets of hearings, one for each set of issues. At each set of hearings, both the prime hearing time (normally at the start of the day) and overall hearing time should be equally divided between proponents and opponents.

Careful deliberation by congressional committee is essential, and committees should ensure that modifications to proposed amendments receive full consideration and a vote before they reach the floor, with a committee report explaining the options considered and the reasons for their adoption or rejection. Perhaps a two-thirds committee vote should be required to send a proposed constitutional amendment to the floor, thereby mirroring the requirement for final passage. If two-thirds of those who are most knowledgeable about a proposed constitutional amendment do not support it, the amendment probably should never be considered by the full House or Senate.

Although the relevant committees may have the greatest expertise regarding a proposed constitutional amendment, floor debates should not be cut short, and there should be opportunities for full discussion and votes on additions, deletions, and modifications to the reported language. To ensure that floor votes are taken only on language that has been previously scrutinized, each House should adopt rules requiring that only changes to a proposed constitutional amendment that have been specifically considered in committee are eligible for adoption on the floor, with two exceptions: (1) votes on clarifying language should be permitted with the consent of the committee chair and ranking member, or by a waiver of the rules passed by a supermajority vote, and (2) substantive changes not previously considered, but approved by a majority vote on the floor, should be referred back to committee for such further proceedings, consideration, and possible modification as needed to ensure that they have been thoroughly evaluated, followed by a second vote on the floor.

8. **Constitutional amendments should have a nonextendable deadline for ratification by the states so as to ensure that there is a contemporaneous consensus by Congress and the states that the amendment is desirable.**

If the ratification process is lengthy, ultimate approval by three-quarters of the states may no longer reflect such a consensus. If extensions are permitted at all, they should be adopted by the same two-thirds vote that approved the amendment originally. Moreover, states that ratified the amendment during the initial time period should be allowed to rescind their approval, thereby assuming a continuing consensus.

Congress's decision to extend the ratification period for the Equal Rights Amendment on the eve of the expiration of the allotted time illustrates problems that this Standard addresses. Although many states ratified the amendment in the period immediately after initial congressional approval, there had been a shift in public opinion by the time that Congress extended the deadline. It was far from clear that the legislatures in all the ratifying states would have approved the amendment if it had been presented to them again after the ratification extension. The perception that the amendment might be adopted, despite the absence of a contemporary consensus supporting it, contributed to the divisiveness that surrounded the struggle over the adoption of the amendment. ♦

Don't Mess With Barney

Mock beatings bring lawsuit

They say it's big news when man bites dog, so when chicken punches out dinosaur, it's bound to create a stir.

Texas-based Lyons Partnership, which owns the rights to Barney, the popular purple dinosaur, has filed a copyright and trademark infringement lawsuit against Ted Giannoulas, also known as The Famous San Diego Chicken, a red-and-yellow mascot who became famous by performing at professional baseball and basketball games.

The lawsuit states that "Giannoulas would punch, flip, stand on, and otherwise assault the putative Barney."

The company seeks a permanent injunction against Giannoulas' use of the dinosaur costume, as well as a minimum of $100,000 for each time he has performed a skit with the Barney look-alike.

"I used to think that Barney was a lovable character," Giannoulas says, "but now I think he's just the biggest bully on the block."

Adapted from ABA Journal, *January 1998, p. 16.*

Update on the Courts

Case Study: First Amendment

Arkansas Educational Commission v. Ralph P. Forbes

Docket No. 96-779

Adapted from Preview of United States Supreme Court Cases, *no. 1 (September 18, 1997): 40–44.*

Petitioners: Arkansas Educational Television Commission
Respondent: Ralph P. Forbes

Freedom of speech is at the center of a case argued before the Supreme Court in October 1997. The Court was asked to decide whether a state-owned television station can exclude a candidate from participation in a televised debate.

FACTS

The Arkansas Educational Television Commission operates the five-station Arkansas Educational Television Network (AETN). Members of the commission are appointed by the governor with approval by the state senate. The noncommercial, educational network receives state funds and, as a state-owned network, is subject to the First Amendment.

In 1992, AETN produced and broadcast a debate between Democratic and Republican candidates for the Third Congressional District in Arkansas. After the station invited the candidates to debate, Ralph Forbes qualified to appear on the ballot as an independent candidate. Forbes then requested to be included in the debate. His request was denied because AETN's producers did not believe Forbes was a newsworthy or viable candidate for the office. They noted that Forbes had failed to raise much money, had not scheduled many events, and had not generated much media or public interest in his campaign.

Forbes sued the station in federal district court, saying that it had violated his free speech rights. He asked for a court order requiring his participation in the debate. However, the debate took place without him when the district court and the Eighth Circuit, on Forbes' appeal, refused to order his inclusion.

Forbes' suit for damages proceeded. After a jury trial in district court, a judgment was entered for AETN. The jury did not find that AETN had excluded Forbes because of his viewpoint or because it had been pressured to do so by government officials.

The Eighth Circuit reversed the decision on Forbes' appeal. The appeals court held that the AETN debate was a limited public forum for all ballot-qualified candidates. As a result, to exclude Forbes, the station had to have a higher standard of justification than if the debate had been a nonpublic forum. The court concluded that Forbes had been excluded because the station did not consider him a viable candidate. The court indicated that the station could not determine the viability of a candidate. That decision belonged to the people. AETN appealed the circuit court's decision to the Supreme Court.

AETN argued that when it excluded Forbes, it was acting as a news programmer making decisions about the scope of and participation in the debate. It insisted that its editorial organization is structured to be independent of the state. As such, it should not be held to higher standards than privately owned stations that are not required to open their facilities on a nonselective basis to all persons. The network stated that the debate was a nonpublic forum, and its decision to exclude Forbes was reasonable and not based on his viewpoints.

Forbes insisted that state-owned networks must have objective standards for excluding candidates from televised debates. They should not rely on subjective judgments concerning viability. He also contended that excluding candidates because of viability discriminates against candidates whose views are unpopular or outside the mainstream. He stated that his exclusion was viewpoint discriminatory because it was based on the fact that he was not a major-party candidate.

SIGNIFICANCE

Should the Supreme Court decide in Forbes' favor, third party and independent candidates would increase their ability to participate in televised debates. Although the ruling would apply only to government stations, almost two-thirds of the noncommercial, educational television and radio stations are owned or operated by state or local government entities. A decision for Forbes might make it more difficult for stations to control the makeup of debates. Some stations might resolve the problem by no longer sponsoring debates.

Case Study: First Amendment

National Endowment for the Arts and Kathryn Higgins as Acting Chairperson v. Karen Finley et al.

Docket No. 97-371

Petitioners: National Endowment for the Arts and Kathryn Higgins as Acting Chairperson
Respondent: Karen Finley et al.

Adapted from Preview of United States Supreme Court Cases, *no. 6 (March 12, 1998): 382–87.*

On March 31, 1998, the Supreme Court heard arguments about whether decency conditions placed on the funding of projects by the National Endowment for the Arts censors freedom of expression.

FACTS

According to statute, the National Endowment for the Arts (NEA) is charged with providing grants to "individuals of exceptional talent engaged in or concerned with the arts." The NEA's chairperson is the final decision maker in approving or disapproving grants. But the chairperson cannot approve a grant application disapproved by the National Council on the Arts and must rely on the recommendations of various advisory panels.

In 1990, Karen Finley and other artists applied for artistic grants from the NEA for performance art involving nudity, urination, and AIDS. The chairperson of the NEA at the time denied the grants despite the recommendations of the National Council on the Arts. The grant applicants later sued the NEA for the funding in federal district court. Shortly thereafter, a decency-consideration provision became law. This provision required the NEA chairperson to ensure that "artistic excellence and artistic merit are the criteria by which applications are judged, taking into consideration general standards of decency and respect for the beliefs and values of the American public." 20 U.S.C. § 954(d). The applicants then amended their complaint to challenge the provision on due process and First Amendment grounds. They were joined in the litigation by the National Association of Artists' Organizations.

The government appealed the district court's decision that declared the decency-consideration provision unconstitutionally vague. That means that the provision was not clear enough to indicate to NEA grant applicants what is prohibited. The Ninth Circuit upheld the district court's ruling by a majority ruling. The majority also noted that the decency-consideration provision violated the First Amendment because it had content and viewpoint restrictions. The Supreme Court reviewed the case at the request of the government.

Arguing before the Supreme Court, the government focused on the language of the decency-consideration provision. According to the government, the provision did not require that each grant application conform to general standards of decency. It states that decency must be considered, but decency is not a test for accepting or rejecting a grant application. The government also noted that the diversity of the advisory panel members satisfied the decency-consideration provision. The diversity represented by panel members helped ensure that the diverse beliefs and values of the American public were considered when reviewing applications.

The grant applicants claimed that the indeterminate nature of the provision is contrary to due process and established First Amendment principles. These require that regulations must be specific enough to allow a person of reasonable intelligence to understand what is prohibited. The government responded that the grant process is not regulatory. The applicants claimed that the provision is regulatory because it restricts the chairperson's ability to approve applications. The NEA stated that decency was only one of many considerations in the approval process.

SIGNIFICANCE

The government is not free to censor artists or to prohibit them from expressing themselves indecently or disrespectfully on their own time and with their own resources. It also cannot impose viewpoint limitations when it provides generally available public funds for expressive activities. But the government is free to fashion its own spending programs. The essential question for the Court to consider in this case is whether NEA funding is like an entitlement after neutral criteria are satisfied or a highly coveted prize. For some, the answer is provided by the history of the NEA. Less than 100 of more than 5,000 applications have received NEA funding in recent years. This seems to indicate that the NEA's grant process is not a public forum.

Case Study: Line Item Veto

William J. Clinton et al. v. City of New York et al.

Docket No. 97-1374

Petitioners: William J. Clinton et al.
Respondent: City of New York et al.

Adapted from Preview of United States Supreme Court Cases, *no. 7 (April 8, 1998): 364–69.*

In 1996, the Congress passed and the President signed the Line Item Veto Act, U.S.C. §§ 691-692 (Supp. II 1996), which went into effect in January 1997. The act enables the President to cancel specific dollar amounts of discretionary budget authority, an item of new direct spending, or a limited tax benefit affecting a small number of voters. The President must determine that the cancellation will reduce the budget deficit, will not impair government function, and will not harm the national interest. The President must also submit to Congress a message stating the reasons for the cancellation. Congress does have the right to disapprove the cancellation of any item.

Questions have arisen about the constitutionality of the Line Item Veto Act. In *William J. Clinton et al. v. City of New York et al.*, the Supreme Court considers its constitutionality.

FACTS

In this case, two sets of plaintiffs are contesting two different cancellations of spending items by the President. One set of plaintiffs includes the city of New York, two hospital associations, and two unions of health-care workers. They are contesting the cancellation of a spending provision that gave New York State preferential treatment in Medicaid payments. The President had canceled an item in the Balance Budget Act of 1997 (Pub. L. No. 105-33, § 4722(c), 111 Stat. 251 515. The item would have relieved New York from repaying Medicaid overpayments.

The second set of plaintiffs includes members of an Idaho potato growers cooperative. They are contesting the cancellation of a section of the Taxpayer Relief Act of 1977, Pub. L. No. 105-34, 111 Stat. 788. This section would have allowed the stock owners of an agricultural processor to sell its facilities to the cooperative without paying tax on any capital gain.

On February 12, 1998, a district court ruled that both the New York and Idaho challengers had standing. The ruling meant that the challengers are qualified to sue and to challenge the constitutionality of the Line Item Veto Act because they are directly affected by its use. The district court also held that the act violated Article 1, Section 7 of the Constitution, which identifies how bills may become law, and the general principle of separation of powers.

The district court found that the canceled items made the bills signed by the President different from the bills passed by the Congress. Therefore, according to the court, the bills were not validly enacted. The court also concluded the Congress could not delegate essentially legislative powers to the President because such delegation violates the plan of the government as described in the Constitution.

On April 27, 1998, the Supreme Court heard arguments in the case. The government contested the standing of the Idaho plaintiffs, saying that the plaintiffs were not directly benefited by the canceled item and could only speculate that its cancellation harmed them. The government also questioned the standing of the New York plaintiffs. It said that the state of New York has more standing than the city and hospitals. The state has not filed suit but has applied for a waiver. As a result, the line item cancellation is not yet in effect. So the government concluded no injury claimed by the challengers can be traced to the cancellation of the line item.

In terms of the act's constitutionality, the government insisted that the act's veto procedures coincided with the President's discretion over the actual spending of funds appropriated by Congress. The Government supported its position with historical documents.

SIGNIFICANCE

If the Supreme Court upholds the Line Item Veto Act as constitutional, presidents will continue to cancel items, subject to Congress' approval. Congress could repeal the act, but that repeal would be subject to the presidential veto. Of course, Congress could override the veto. If the court declares the act unconstitutional, the Constitution would have to be amended to permit line item vetoes. Amending the Constitution is not an easy process. In over 200 years, it has been amended only 27 times.

Update on Congress

A Review of Current Issues Facing Congress

Update on Law-Related Education, 22.1, 1998, pp. 31–32. © 1998 American Bar Association.

Religious Bias Legislation Proposed

The U.S. Equal Employment Opportunity Commission (EEOC) is the government agency charged with investigating complaints about job discrimination. In recent years, the EEOC has received a growing number of complaints about religious discrimination in the workplace. Between 1993 and 1997, complaints alleging religious discrimination increased more than 18 percent. Even as the EEOC is investigating an increasing number of complaints, Congress is considering legislation that would require employers to do more to accommodate workers' religious beliefs.

Today, freedom from religious bias in the workplace is protected by Title VII of the Civil Rights Act. It requires employers to make reasonable accommodations for employees' religious beliefs as long as doing so would not be an undue hardship. However, in the 1977 case *TWA v. Hardison* (432 U.S. 63), the Supreme Court defined *undue hardship* as anything more than a minimal effort or expense.

The Workplace Religious Freedom Act, as the pending legislation is known, would considerably raise the standard for what constitutes an undue hardship. In the act, *undue hardship* is defined as something that requires "significant difficulty or expense."

Co-sponsored by a liberal Democratic senator John Kerry of Massachusetts and a conservative Republican senator Dan Coats of Indiana, the legislation has vocal critics and supporters. Critics say that the proposed legislation is not needed because the law already works. Supporters state that the act simply requires that requests for religious accommodations be subject to a balancing test between employees' needs and employer's requirements. They also note that the definition of *undue hardship* in the proposed legislation matches the definition of that term in the Americans with Disabilities Act, thus giving consistency to the language of laws. According to one supporter, the act makes it clear that religious discrimination will not be tolerated in the workplace.

Should this legislation pass through Congress, it could result in an even greater number of religion-bias cases filed with the EEOC.

Adapted from ABA Journal, *April 1998, pp. 30–31.*

Campaign Finance Reform Voted Down

On Monday, March 30, 1998, the majority leadership of the House of Representatives engineered the introduction of an unpopular campaign-reform bill for vote on the floor. The leadership introduced the bill under restrictive rules that required a two-thirds vote for the bill to pass. In addition, amendments could not be added to the bill, and only limited debate was allowed. The bill, advocated by Republican leaders, was soundly defeated by a vote of 337–74. Its defeat may have virtually killed any chance for campaign reform this year.

Information in this article is used in the Teaching Strategy on page 41.

The defeated bill included provisions that many representatives could not support. One such provision would have required unions to obtain the written permission of their members to spend any union funds for political purposes.

Critics of the defeated bill hoped to garner enough support to introduce a popular reform bill co-sponsored by Christopher Shays, a Republican representative from Connecticut, and Martin Meehan, a Democrat from Massachusetts. To get the Shays/Meehan bill before the House, however, would require a petition signed by House members. In the past, few such petitions have been successful. It appears that campaign finance reform will have to wait until after the new congressional session in January.

Adapted from USA Today, *March 31, 1998.*

More Money for Education?

President Clinton has proposed a major education program costing $7.3 billion over five years as part of a $15 billion education initiative. The $7.3 billion would be used to recruit and train elementary and secondary school

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teachers. The remainder of the $15 billion initiative would be allocated for other purposes. About $5 billion would go for school construction; $2.5 billion would help promote the importance of staying in school; $200 million would be for programs to assist Latino students; and $20 million would be set aside to help set up more than 1,300 charter schools.

Clinton's plan helps push education and training programs to the top of his domestic agenda. Polls show that spending increases for school construction and teachers—meaning smaller class sizes—are popular with voters. The plan's $200 million for Latinos, a growing voting bloc, highlights spending increases for bilingual education, educational aid for migrant children, and colleges serving Latinos.

While Republicans are likely to support some of these proposals, they traditionally have argued that school-funding issues are best left to states and local governments. The Clinton plan hopes to bring an end to the school voucher controversy by funding the start-up costs for 1,300 charter schools—those free from most school board regulations. At present, there are more than 700 charter schools in the United States. Republicans, while not opposed to charter schools, have generally pushed for vouchers instead. Vouchers would provide parents assistance in paying for private schools of their choice.

The most costly proposal is the $7.3 billion teacher recruitment and training program, which would help reduce class size—particularly in poor and inner city areas—to 15 to 18 students. The President also seeks to spend $1.5 billion over five years to create "educational opportunity zones." Fifty poor, low-achieving districts would receive funds to institute reforms to help boost grades and test scores and finance programs allowing parents to choose which public school their children will attend.

Another proposal, called "College-School Partnerships," would allocate $2.5 billion over five years to match college students and educators with more than 1.6 million high school and grade school children. This mentoring program, targeted at about 3,300 poverty-area schools, would be designed to inform the younger students of the advantages of a college education and how to obtain financial aid for college.

The plan further proposes to make available more spending to introduce computers into classrooms and train teachers in the appropriate technology. It would also provide additional funds for the "Safe and Drug-Free Schools" program and for students who have disabilities.

Adapted from The Wall Street Journal, *January 13, 1998, pp. A3–A6.*

Tobacco Legislation Under Fire

Senator John McCain, a Republican from Arizona, proposed a legislative package aimed at reducing smoking in the United States. The legislation, with support from Republicans and Democrats alike, would result in price increases of $1.10 for a pack of cigarettes over five years. It would impose penalties on tobacco companies if the number of teen-aged smokers did not decrease by indicated levels. It would severely restrict cigarette advertising, allow the Food and Drug Administration (FDA) to regulate tobacco, and include no limits on private lawsuits against cigarette manufacturers.

McCain's bill did limit, however, the amount of civil damages cigarette manufacturers would have to pay out in any one year. According to the legislation, the manufacturers would not have to pay more than $6.5 billion to settle claims in a single year. Claims that surpassed the $6.5 billion limit could be paid in following years. The McCain legislation includes stronger measures than the settlement agreements that the tobacco industry reached with state attorneys general in June of last year.

Both the tobacco industry and public health officials have criticized the proposed legislation. The tobacco industry wants protection from lawsuits. According to one industry spokesperson, the legislation was likely to bankrupt tobacco firms. On the other hand, some public health officials protested that the legislation offers antismoking programs that are too weak and tobacco-industry protections that are too strong. Despite the wide criticism, the proposed legislation is likely to serve as the basis for any tobacco bill passed by the Senate.

Adapted from New York Times, *March 31, 1998.*

Benefits—Legal Help

The American Bar Association has coordinated volunteer lawyers nationwide to donate legal help to families with disabled children appealing Supplemental Security Income's decision to eliminate their benefits.

"We feel confident that with the help of our pro bono lawyers, these families will have a far greater chance for benefits returned to them," says Julie Justicz, director of the ABA Children's SSI Project.

Of the more than one million children receiving SSI funds in 1997, 264,000 were reviewed by the Social Security Administration. Following those reviews, the agency terminated aid to more than 60 percent of the mentally disabled and mentally retarded children and their families. Appeals to continue benefits are possible but require legal help. For more information, contact the ABA at (312) 988-6148.

LRE Project Exchange

Washington's Judges in the Classroom

Krista Goldstine-Cole

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Judges in the Classroom (JITC), a statewide program administered by the Washington State Office of the Administrator for the Courts (OAC), brings judges and teachers together in order to promote better understanding of the law and the judiciary. Established in 1991 by Barbara Durham, chief justice of the Washington State Supreme Court, JITC paired 75 judges and commissioners with teachers in just five years.

Teaching everything from the mediation process to buying a used car, 52 volunteer judges visited 57 classrooms during the 1995–96 school year. The Herschel C. Lyon Mock Trial is most popular among elementary students, while search and seizure has proven to be most popular and enduring among secondary students. The program maintains 35 professionally developed lesson plans to support participants in JITC.

Generally, teachers initiate pairings by contacting the Office of the Administrator for the Courts and requesting a judge. Teachers are asked to identify the topic area of interest to them. Most requests at the elementary level are related to introductory due process, the nature of the appellate process, and issues of illicit drugs. Secondary teachers tend to be interested in civil rights, often in response to recent events at their school. Locker searches, protected speech, and religious activities at school are common concerns.

Depending on the location of the school, the age of the students, and the topic, the JITC program administrator will approach a judge. In most cases, the judge has been involved in the past or has volunteered during a judicial education event. Most judges are eager to work in the schools, though many have a clear preference for a particular age group.

Photo courtesy of the Yakima Herald Republic, photographer Gordon King

Each partner is given the name, address, and phone number of the other as well as a set of relevant lesson plans. The teacher and judge must contact each other to set a time and to discuss the specific lesson to be taught.

On occasion, judges will request a pairing. This occurs for a variety of reasons from the need to be visible in the community to a personal commitment to law-related education. It can be difficult to match a judge with a school if the program administrator is unfamiliar with the schools in the geographic area of interest to the judge. Most teachers, however, welcome guests in their classrooms and are easy to work with when offered a partnership. OAC provides lesson plans and facilitates direct communication in this case.

Once established, partnerships can take on a life of their own. For example, Judge Michael Hurtado of Seattle Municipal Court recently received a call from a teacher whose classroom he had previously visited. There had been a drug arrest at the school stemming from a locker search. The teacher hoped the judge would address an assembly of

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Adapted from Krista Goldstine-Cole, "Judges in the Classroom: Judicial Education Outreach," NASJE NEWS (spring 1996): 8–9, 11, by permission of the publisher, the National Association of State Judicial Educators.

students to help quiet the storm. (Locker searches are remarkably disturbing to privacy-conscious adolescents.)

However the partnership begins, Judges in the Classroom provides relevant teaching materials. The 35 JITC lesson plans were developed by Margaret Fisher of the Seattle University School of Law's Institute for Citizen Education in the Law. The lessons are educationally sound, legally accurate, and developmentally appropriate.

There are lessons for all grades, and they are available at the OAC's Web site (www.wa.gov/courts/educate.home.htm). Two of the lessons for grades 9–12 are particularly appropriate for teaching about the First Amendment. "Religion in the Schools" identifies the requirements of the Equal Access Act, how the act is applied, and the tension between the First Amendment's free exercise clause and the establishment clause. "Freedom of Expression in Special Places" analyzes application of the First Amendment to school newspapers, the limitation of First Amendment rights in school settings, and the process of judicial decision making.

Lesson plans make Judges in the Classroom both unique and successful. Many judges are hesitant to participate without the guidance and security a lesson plan provides. Each plan establishes learning objectives at grade level, provides general instructions to the judge, and includes any handouts.

Teachers appreciate the topics because they are keyed to standard public school curriculum. Third grade teacher Barbara Williams requested a pairing when she learned that several primary school lessons focus on problem solving, the theme for social studies in her classroom. Williams recently reported, "Commissioner Jasprica was a little worried because this was her first time to teach. But she delivered, I think, a remarkably effective lesson."

Volunteer judges in Washington made 204 visits to public school classrooms in five years. Judges like Michael Hurtado continue to make a difference. During his talk on drugs in the school, a student asked, "You mean, if you're holding a joint—just a joint—THAT'S possession?"

"Yes," replied the judge, knowing he had educated at least one student that day.

For more information about Judges in the Classroom, contact Krista Goldstine-Cole, Office of the Administrator for the Courts, 1206 S. Quince St., P.O. Box 41170, Olympia, WA 98504-1170, 360/705-5315, E-mail: krista.goldstine.cole@courts.wa.gov, Web: www.wa.gov/courts/educate.home.htm.

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Teaching Strategy

First Amendment Survey

Wanda J. Routier

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Background

This lesson gives students an opportunity to conduct and analyze their own survey and compare it with the national survey conducted by The Freedom Forum. The survey included here contains excerpts from The Freedom Forum survey. In addition to conducting the survey, students will compile the results and turn raw data into meaningful statistical information (percentages, etc.).

Results from the national survey are discussed in the article on page 4. The complete survey and results are available from The Freedom Forum as listed in this article's Resource section. Before beginning this lesson, it is recommended that you obtain a copy of the survey and results and become familiar with them.

This lesson works best with interdisciplinary collaboration among social studies, English/journalism, and math teachers. An English or journalism teacher can share effective ways to conduct impartial, unbiased interviews and surveys, including how to ask a question and write down the response. A math teacher can share methods to calculate and analyze data gathered in the results of the survey.

Wanda J. Routier is a faculty associate at Johns Hopkins University in Baltimore, Maryland, teaching in the Graduate Special Education Department.

Objectives

As a result of this lesson, students will

- Learn about First Amendment rights
- Conduct and analyze a survey about First Amendment rights
- Compare their results with those from the national survey conducted by The Freedom Forum

Target Group: Secondary
Time Needed: 5–6 classes plus time outside of class to conduct survey
Materials: Student Handouts 1 and 2

Procedures

1. Ask students to answer the following questions: What are the five rights protected by the First Amendment? What are the three rights you think are most important? Why? If you were voting today, would you vote to ratify the First Amendment? Do you think you learn enough about First Amendment rights in school? Do you feel you are free to express yourself in different situations, such as at work or at school? Discuss student responses to these questions. Compare their responses to the first question with responses in the table (Americans Able to Name First Amendment Rights) on page 16.
2. Introduce The Freedom Forum and discuss the poll it recently conducted about the First Amendment. Tell students they will be conducting their own poll and will be analyzing and comparing their results with the results of The Freedom Forum poll. Decide whether students will work individually or in pairs. Decide on the population to be surveyed (it must be adults to compare with The Freedom Forum results). Possibilities include parents, other adult family members, teachers, or neighbors. Decide how many adults each student will survey.
3. Distribute Handout 1 to students and discuss each point in preparation for the survey. Review the tips for conducting a good survey. Alternatives to students writing responses would be to have the interviewees write their own responses or to tape-record the interview for later transcription.
4. Distribute Handout 2. Spend time reviewing each question so students understand the vocabulary, what the question is asking, how to ask the question and write responses, and what answers might be expected. Have students work in pairs and practice conducting the survey, each taking a turn asking the questions and writing the responses.

See the article, "The Freedom Forum First Amendment Poll: An Analysis," on page 4 for background information.

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5. Distribute enough copies of the survey so each student has one survey per adult to interview plus a few extra. Give students enough time to conduct the survey. This will depend upon the population selected and the number of adults to be surveyed.
6. When students are finished conducting their surveys, begin the scoring process. Distribute one copy of the survey for students to use to compile their results. On the top of the page, they should write "Scoring Copy" and their name in red ink. Students will add all the responses for each question from all of their surveys. They will write a tally mark for each response next to the answer on the page. When finished, they count the tally marks and write the number next to the response. Students can write extra comments on the scoring copy by the appropriate question. When finished, they should staple all surveys to their scoring copy. Assist students as necessary. For example, question #2 of the survey:

   As you may know, the First Amendment is part of the U.S. Constitution. Can you name any of the specific rights that are guaranteed by the First Amendment? (check all that are mentioned and write others that are not listed)

   20 Freedom of the press
   ||||/ ||||/ ||||/ ||||/
   17 Freedom of speech
   ||||/ ||||/ ||||/ ||
   9 Freedom of religion
   ||||/ ||||
   4 Right to petition ||||
   3 Right of assembly/Right to association |||
   2 Other: *Right to own a gun* ||
   2 Don't Know/No Comment ||
7. Once students are finished, assign them to groups of three or four. Distribute another blank copy of the survey. Assign a group leader to guide the group through the survey to tally results. Assign a recorder to record and tally all scores. On top of this survey, the recorder should write "Group Scoring" in red ink and list group names. Groups should record all the scores for each response and total them when finished as they did individually. Then each group should staple all surveys to the group scoring sheet.
8. Use one copy of the survey to tally responses from groups. This should be the copy with the final results from all students. Ask each group to give the total number of responses for each question as you go through the survey. Review the final totals with students. You may wish to make transparencies of the survey and write the totals on the transparencies so students can see the totals during their discussion. When finished, collect all group scoring sheets. Later, you may wish to spot check tallies to check for accuracy.
9. Convert the raw data into percentages and other statistical information. For example:
   The question: "Name the rights guaranteed by the First Amendment."
   Number of people surveyed: 50
   Number of people who named each right and converted numbers to percentages:

speech	48	=	96%
press	50	=	100%
religion	36	=	72%
assembly	10	=	20%
petition	8	=	16%

10. With the information gathered from the analysis of your data, discuss the results of your survey. Be careful not to make broad, sweeping assumptions by interpreting the results incorrectly.
11. Make comparisons of your results and the results from The Freedom Forum poll. Ask students the following questions: How is your survey similar to and different from The Freedom Forum poll? Why do you think that is so? What topics do people need to be more informed about?
12. As a wrap-up, ask students the following questions: What have you learned about the First Amendment as a result of doing the survey? Do you think you know more about the First Amendment now than you did before the survey?
13. Divide students into small groups. Have them make a list of what students should be taught in school in order to become informed citizens as a result of what they learned from their survey. Discuss their suggestions and ways to informally incorporate the ideas into the curriculum.

Resource

The Freedom Forum, World Center, 1101 Wilson Blvd., Arlington, VA 22209; (703) 528-0800; To order publications, call 1 (800) 830-3733.

The Freedom Forum World Wide Web address: http://www.freedomforum.org/newsstand/reports/sofa/printsofa.asp

Items available at the web site:
"The Freedom Forum Poll"
"State of the First Amendment" and analysis of the poll
Orders for hard copies
Comparison to the original survey

Puzzle Answers for Page 63

Across

2. expression
5. five
8. Constitution
10. assembly
11. religion
12. speech

Down

1. freedom
3. petition
4. Bill of Rights
6. amendment
7. first
9. press

Student Handout 1

Conducting a Survey

1. In order to compare your results with The Freedom Forum survey, you must poll adults. Possibilities include parents, other adult family members, teachers, or neighbors. What is the population you will survey?

2. How many adults will you interview for the survey?

3. Remember the three guidelines for conducting a survey:
   - Be objective. Don't make comments, state your opinion, or use voice inflections or body language to influence the person you are interviewing.
   - Don't judge, ridicule, or make fun of any answer.
   - Record and report only the facts (what the person says).

4. Other guidelines:
   - Write down exactly what the person says. Don't put it into your own words.
   - Ask the person to repeat an answer or go slower if you cannot keep up with writing his or her response.
   - Respect other people's opinions even though they may be different from yours. The First Amendment protects their opinions and yours opinions.
   - Don't drive the interview toward any one topic. Stick with the questions as stated on the survey.
   - Watch good news interviews on television (network evening news shows or specials) to get an idea of how to ask questions and conduct an interview.
   - Be sure you make the person feel free to give his or her own opinion, not what you want to hear.

Student Handout 2

Survey—American Attitudes About the First Amendment

Directions: Interview an adult about his or her knowledge of the First Amendment. Read the bold print aloud. Check the line(s) that match his or her answer. If the person says a different answer or other things, write it down in the margin.

Hello. My name is _____. I'm from (teacher's name and class or school name and class). We are conducting a survey on important issues facing the nation and would like your opinions.

I. KNOWLEDGE AND OPINIONS ABOUT FIRST AMENDMENT AND AMERICAN SOCIETY

1. As you know, the U.S. Constitution provides many individual rights and freedoms. Are there any particular rights or freedoms that you feel are most important to American society?

_____ Freedom of the press
_____ Freedom of speech
_____ Freedom of religion/not to practice religion
_____ Freedom from unreasonable search and seizure
_____ Right to petition
_____ Right of assembly/Right to association
_____ Right to bear arms/own guns
_____ Right to trial by jury/fair trial
_____ Right to privacy
_____ Right to protest
_____ Other: _____
_____ Don't know/No comment

2. As you may know, the First Amendment is part of the U.S. Constitution. Can you name any of the specific rights that are guaranteed by the First Amendment? (check all that are mentioned and write others that are not listed)

_____ Freedom of the press
_____ Freedom of speech
_____ Freedom of religion
_____ Right to petition
_____ Right of assembly/Right to association
_____ Other: _____
_____ Don't Know/No comment

3. The U.S. Constitution protects certain rights, but not everyone considers each right important. I am going to read you some rights guaranteed by the U.S. Constitution. Please tell me how important it is that you have that right.

A. How important is it that you have the right to assemble, march, protest, or petition the government about causes and issues? Is it essential that you have this right, important but not essential, or not that important?

_____ Essential
_____ Important but not essential
_____ Not that important
_____ Don't know/No comment

B. How important is it that you have the right to speak freely about whatever you want? Is it essential that you have this right, important but not essential, or not that important?

_____ Essential
_____ Important but not essential
_____ Not that important
_____ Don't know/No comment

C. How important is it that you have the right to practice the religion of your choice or no religion? Is it essential that you have this right, important but not essential, or not that important?

_____ Essential
_____ Important but not essential
_____ Not that important
_____ Don't know/No comment

II. FREEDOM OF SPEECH

1. I'm going to read you some ways people might exercise their First Amendment right of free speech. For each, tell me if you agree or disagree that someone should be free to do it.

Student Handout 2 *(continued)*

A. Do you agree or disagree that people should be allowed to express unpopular opinions? Do you strongly or mildly (agree/disagree)?

_____ Strongly agree
_____ Mildly agree
_____ Mildly disagree
_____ Strongly disagree
_____ Don't know/No comment

B. Do you agree or disagree that people should be allowed to place sexually explicit material on the Internet? Do you strongly or mildly (agree/disagree)?

_____ Strongly agree
_____ Mildly agree
_____ Mildly disagree
_____ Strongly disagree
_____ Don't know/No comment

C. Do you agree or disagree that people should be allowed to burn or deface the American flag as a political statement? Do you strongly or mildly (agree/disagree)?

_____ Strongly agree
_____ Mildly agree
_____ Mildly disagree
_____ Strongly disagree
_____ Don't know/No comment

2. Please tell me if you agree or disagree with the following statement: It's dangerous to restrict freedom of speech because restricting the freedom of one person could lead to restrictions on everybody. Do you strongly or mildly (agree/disagree)?

_____ Strongly agree
_____ Mildly agree
_____ Mildly disagree
_____ Strongly disagree
_____ Don't know/No comment

III. FREEDOM OF THE PRESS

1. Please tell me whether you agree or disagree with the following statement: Tabloid newspapers such as *The Star* and *The National Enquirer* should have the same freedom to publish what they want as other newspapers such as *The New York Times* and *The Wall Street Journal*. Do you strongly or mildly (agree/disagree)?

_____ Strongly agree
_____ Mildly agree
_____ Mildly disagree
_____ Strongly disagree
_____ Don't know/No comment

2. I'm going to read you some ways that freedom of the press may be exercised. For each, tell me if you agree or disagree that the press should be free to do it.

A. Do you agree or disagree that newspapers should be allowed to publish freely without government approval of a story? Do you strongly or mildly (agree/disagree)?

_____ Strongly agree
_____ Mildly agree
_____ Mildly disagree
_____ Strongly disagree
_____ Don't know/No comment

B. Do you agree or disagree that journalists should be allowed to keep a news source confidential? Do you strongly or mildly (agree/disagree)?

_____ Strongly agree
_____ Mildly agree
_____ Mildly disagree
_____ Strongly disagree
_____ Don't know/No comment

C. Do you agree or disagree that television networks should be allowed to project winners of an election while people are still voting? Do you strongly or mildly (agree/disagree)?

_____ Strongly agree
_____ Mildly agree
_____ Mildly disagree
_____ Strongly disagree
_____ Don't know/No comment

IV. FREEDOM OF RELIGION

1. I'm going to read you some ways people might exercise their First Amendment right of freedom of religion. For each, tell me if you agree or disagree that someone should be free to do it.

A. Do you agree or disagree that people should be allowed to display religious symbols on government property? Do you strongly or mildly (agree/disagree)?

_____ Strongly agree
_____ Mildly agree
_____ Mildly disagree
_____ Strongly disagree
_____ Don't know/No comment

B. Do you agree or disagree that teachers or other public school officials should be allowed to lead prayers in school? Do you strongly or mildly (agree/disagree)?

_____ Strongly agree
_____ Mildly agree
_____ Mildly disagree
_____ Strongly disagree
_____ Don't know/No comment

2. Please tell me if you agree or disagree with the following statement: It's dangerous to place restrictions on freedom of religion because restrictions on one type of religious activity could lead to restrictions on others. Do you strongly or mildly (agree/disagree)?

_____ Strongly agree
_____ Mildly agree
_____ Mildly disagree
_____ Strongly disagree
_____ Don't know/No comment

V. OTHER QUESTIONS

1. To the best of your recollection, have you ever taken classes in either school or college that dealt with First Amendment freedoms?

_____ Yes—Would that have been in grade school, high school, or college?
  _____ Grade school (grades 1–8) (check all that apply)
  _____ High school
  _____ College
  _____ Don't know
_____ No
_____ Don't know/No comment

2. Overall, how would you rate the job that the American educational system does in teaching students about First Amendment freedoms–excellent, good, fair, or poor?

_____ Excellent
_____ Good
_____ Fair
_____ Poor
_____ Don't know/No comment

VI. DEMOGRAPHICS

Now just a few questions to help classify your answers.

1. In which age group are you?

_____ 18–29
_____ 30–44
_____ 45–59
_____ 60+
_____ Don't know/No comment

2. Are you male or female?

_____ Male
_____ Female
_____ Don't know/No comment

3. What was the last grade of school you completed? Grade school or less, some high school, high school, some college, college grad, postgraduate work?

_____ Grade school or less
_____ Some high school
_____ High school
_____ Some college
_____ College grad
_____ Postgraduate work
_____ Don't know/No comment

4. Are you white, black, Hispanic, Asian, or something else?

_____ White
_____ Black
_____ Hispanic
_____ Asian
_____ Other: _____
_____ Don't know/No comment

5. Politically speaking, do you consider yourself to be liberal, moderate, or conservative?

_____ Liberal
_____ Moderate
_____ Conservative
_____ None of these
_____ Don't know/No comment

Thank you very much for participating in this survey. Your cooperation is greatly appreciated.

Teaching Strategy

Accommodating Students' Religious Needs

Update on Law-Related Education, 22.1, 1998, pp. 41–43. © 1998 American Bar Association.

Background

In "State of the First Amendment: Freedom of Religion," Donna Demac reviews the history of religious freedom in the United States and identifies issues involving this First Amendment freedom. Charles Haynes reflects on how Muslim students can meet their religious obligations while attending public schools in "Muslim Students' Needs in Public Schools." He considers whether the schools can accommodate students' religious needs without violating the establishment clause of the First Amendment. This strategy offers students an opportunity to weigh the establishment clause against the free exercise clause of the First Amendment. They check their understanding about the role of public schools in religious expression and consider how or if schools can accommodate the religious needs of students.

Objectives

As a result of this lesson, students will

- Reflect on the historical background of the impact of religious freedom on schools
- Determine what role religious expression can play in public schools
- Identify the challenges schools face in balancing the establishment and free exercise clauses of the First Amendment
- Examine the religious obligations of Muslim students as a case study for accommodating various religious practices

Target Group: Secondary
Time Needed: 3–4 classes
Materials Needed: Articles "State of the First Amendment: Freedom of Religion" and "Muslim Students' Needs in Public Schools," Student Handout, answers to Student Handout questions provided by The Freedom Forum First Amendment Center
Optional Resources: *Finding Common Ground: A First Amendment Guide to Religious and Public Education* (Nashville, Tenn.: The Freedom Forum First Amendment Center, revised, 1996), and the films *Free to Be?* (New York City: Anti-Defamation League, distributor), and *Religious Diversity* (New York: Phoenix Films)

Procedures

1. To introduce the concept of religious freedom in relation to the First Amendment, have students read "State of the First Amendment: Freedom of Religion" by Donna Demac on page 10. Briefly discuss the article and encourage students to list on the chalkboard dos and don'ts related to religious expression in public schools. Explain that schools must carefully balance the establishment and free exercise clauses of the First Amendment.
2. Organize the class into small groups of three to four students and distribute copies of the Student Handout to the groups. Allow time for group members to record a response to each question. After groups have prepared their responses, discuss each question and provide answers with the background information available from The Freedom Forum First Amendment Center. (You can find the answers, with discussion, at http://www.fac.org/publicat/parents/parents.htm or by contacting The Freedom Forum First Amendment Center at Vanderbilt University, 1207 18th Avenue, South, Nashville, TN 37212; (615) 321-9588. You may wish to have students obtain the forum's answers to these questions as part of the activity, or you might obtain the answers before beginning the activity.)
3. Explain to students that in the United States there is a rich diversity of religious communities. Each has its own teachings and practices. Tell students that sometimes religious obligations and practices impact the schools. For example, students may be absent from school as they observe religious holidays. In this activity, students will examine the

See the articles on pages 10 and 17 for background information.

Adapted from Charles Haynes, "The Needs and Requirements of Muslim Students in Public Schools," in Religion in American History: What to Teach and How *(Alexandria, Va.: Association for Supervision and Curriculum Development, 1990), by permission of the publisher.*

religious practices and obligations of Muslims and their impact on schools as a case study. To build background for the activity, students should read the article "Muslim Students' Needs in Public Schools" by Charles Haynes on page 17.

4. After discussing the background information about Islam, divide the class into groups. Each group is to serve as a committee appointed by the superintendent of schools to recommend a response to the suggestions for accommodating the needs of Muslim students identified in "Muslim Students' Religious Needs" on page 19. Give groups a week to draft their responses. Which suggestions can be accommodated? Which requests cannot be granted? Responses must be supported by practical and constitutional arguments. Provide time for the groups to present their responses.
5. Assign a group of students to represent school administrators. Have them research the policies of the school and school district concerning special requests from religious groups. Assign another group to represent Muslim parents. Ask them to formulate ideas that could accommodate the religious needs of their children and arguments to support the policy of accommodation. Have the two groups role-play in class a meeting between the administrators and the parents in which the accommodations the school can make are discussed. Students should use the information acquired in steps 2–4 as a resource for the role play. After the role play, have the class discuss whether administrators were able to meet most needs and whether parents understood limitations facing the school as it tries to meet the needs of all students.
6. Ask the class to identify existing school practices that accommodate special needs unrelated to religion (for example, medical excusal and absentee policies, facilities for those with physical disabilities). Discuss the differences, if any, between these accommodations and accommodations based on religious belief. Have the class consider existing school policies and practices as applied to religion. Do these policies and practices favor some religious groups over others, or are they neutral toward religion in general?
7. If time permits, show a video that focuses on the challenges and opportunities presented by pluralism in the United States. Help students identify the major emphasis of the film, suggest ways that society can show respect for and accommodate differences, and identify potential benefits that may accrue to schools when they accommodate religious needs. Two excellent films are *Free to Be?* distributed by the Anti-Defamation League and *Religious Diversity*, a production of Phoenix Films.

   Free to Be? New York City: Anti-Defamation League, distributor. Asks the viewer to think about questions raised by diversity and conformity in American life: What are the values of ethnic and religious group loyalty and identification, and what degree of assimilation is desirable in order to foster a united nation?

   Religious Diversity. New York: Phoenix Films. Points out that religious liberty has allowed religions to flourish in the United States. Young people from a number of major faiths describe how they understand their religious beliefs and practices.
8. Conclude the activity by summarizing ways in which schools can accommodate religious needs. Then ask students to suggest ways that they as students can show respect for the beliefs and traditions of all students.

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Student Handout

Understanding Students' Religious Liberty Rights

Consider these questions regarding religious expression and practices in schools. You can find the answers, with discussion, at http://www.freedomforum.org or by contacting The Freedom Forum First Amendment Center at Vanderbilt University, 1207 18th Avenue, South, Nashville, TN 37212; (615) 321-9588.

Did the Supreme Court rule against student prayer in public schools?

May students pray together in public schools?

May students offer prayers at graduation ceremonies and baccalaureate services?

Is it constitutional to teach about religion in public school?

May students form religious clubs in public schools?

May students wear religious garb and display religious symbols in public schools?

May students distribute religious literature in public schools?

May students be released for off-campus religious instruction during the school day?

Adapted from "A Parent's Guide to Religion in the Public Schools," Nashville, Tenn.: The Freedom Forum First Amendment Center at Vanderbilt University, (no date), with permission of the publisher.

Teaching Strategy

Amending the Constitution

Keith A. Pittman

Update on Law-Related Education, 22.1, 1998, pp. 44–47. © 1998 American Bar Association.

A Note to Teachers: This strategy's student handouts have been adapted for classroom use from the article on pages 22–27. See that article for further clarification of the handouts' content. The strategy can also be used with the lesson on page 48.

Objectives

As a result of this lesson, students will

- Consider historical forces that have shaped the U.S. Constitution via the amendment process
- Examine the constitutional amending process, focusing upon why the amendment process should be approached with particular deliberation and care
- Discuss the freedoms of expression guaranteed by the First Amendment (speech, religion, press, assembly, petition)
- Address whether any recently proposed amendment is appropriate for consideration as an amendment
- Consider whether any recently proposed amendments could impact upon rights guaranteed by the First Amendment

Target Group: Secondary
Time Needed: 6–8 classes plus time for research
Materials Needed: Article on pages 22–27, Student Handouts 1–2, access to historical research materials

Keith A. Pittman, a former high school teacher, is now an associate with Butler, Wooten, Overby, Pearson, Fryhofer & Daughtery, a plaintiffs' firm with offices in Atlanta and Columbus, Georgia.

Procedures

1. Introduce the lesson by establishing students' background knowledge of the Constitution. Focus the discussion on these points:
   a. When and how was the Constitution drafted and implemented?
   b. What are the purposes of the Constitution?
   c. How well has the Constitution met its purposes?
2. Give each student a copy of the article "Developing Standards for Constitutional Change" and assign the article for reading, or summarize the article's main ideas.
3. After classroom discussion of the article's main topics, give each student a copy of Handout 1. Briefly discuss the general types of amendments that have been passed.
4. Divide the class into four groups to examine in detail the four periods of constitutional history reflected by the amendments (if possible, create groups so that there is one student per amendment):
   Group 1: Bill of Rights, 1791 (Amendments 1–10)
   Group 2: Early Constitutional History, 1798–1870 (Amendments 11–15)
   Group 3: Early Twentieth Century, 1913–33 (Amendments 16–21)
   Group 4: Modern Amendments, 1951–92 (Amendments 22–27)
   Each group (and/or individual student) is to
   a. Research the intent of the amendments and the historical forces that impacted upon and/or resulted in the passage of each. (For example, the Reconstruction amendments grew out of the need for the Constitution to address issues raised by the Civil War.)
   b. Rate the amendments for each period using selected questions/standards in Handout 2. Give each amendment a score of 1 to 8 based on how many standards it meets. Ratings should enable analysis of whether amendments have been passed that should not have been, and, if so, why not.
   c. Deliver a class presentation on the findings in (a) and (b).
5. At http://www.thomas.loc.gov, as well as at magazine and newspaper web sites or in printed materials, have student groups research constitutional amendment proposals considered by the 104th and 105th Congresses. Ask each group to prepare a report on one or more proposed amendments. Groups will report in detail about the amendments to the class, including whether it seems that the proposals, if adopted, would affect any of the five First Amendment freedoms. (See page 4 for the text of the amendment and an explanation. You may wish to copy the information for students.) Copies of their reports should be made available to the class.
6. Have student teams pair off to build and present arguments for and against any amendments affecting the First Amendment freedoms, using the questions/standards, as appropriate, on Handout 2.

Student Handout 1

Constitutional Amendments: A Compendium

I. Bill of Rights, 1791 (Amendments 1–10)

Amendment 1 (1791). Prohibits establishment of religion; guarantees freedom of religion, speech, press, assembly, and petition.

Amendment 2 (1791). Prohibits infringement of the right of the people to keep and bear arms.

Amendment 3 (1791). Prohibits the quartering of soldiers in any house during times of peace without consent of owner or during time of war in manner not prescribed by law.

Amendment 4 (1791). Protects against unreasonable searches and seizures; requires that warrants be particular and issued only on probable cause supported by oath or affirmation.

Amendment 5 (1791). Requires presentment to grand jury for infamous crimes; prohibits double jeopardy; prohibits compelled self-incrimination; guarantees due process of law; requires that property be taken only for public use and that owner be justly compensated when property is taken.

Amendment 6 (1791). Guarantees right to speedy and public trial by impartial jury, compulsory process, and counsel in criminal prosecutions.

Amendment 7 (1791). Guarantees right to jury trial in suits at common law when value in controversy exceeds twenty dollars.

Amendment 8 (1791). Prohibits excessive bail or fines; prohibits cruel and unusual punishment.

Amendment 9 (1791). Guarantees that unenumerated rights are retained by the people.

Amendment 10 (1791). Reserves to the states or the people rights not delegated by the U.S. Constitution to the federal government or prohibited to the states by the Constitution.

II. Early Constitutional History, 1798–1870 (Amendments 11–15)

Amendment 11 (1795; proclaimed 1798). Prohibits suits in U.S. courts against a state by citizens of another state.

Amendment 12 (1804). Provides for separate electoral college voting for president and vice-president

Amendment 13 (1865). Prohibits slavery; authorizes congressional enforcement of the amendment's provisions.

Amendment 14 (1868). Defines U.S. and state citizenship and prohibits state infringement; requires reduction of representation in Congress when right to vote infringed; prohibits public officers who participated in rebellion from holding public office; prohibits questioning of public debt; makes void any debt incurred in aid of rebellion against the United States; authorizes congressional enforcement of the amendment's provisions.

Amendment 15 (1870). Prohibits abridgment of the right to vote on account of race; authorizes congressional enforcement of the amendment's provisions.

Student Handout 1 *(continued)*

III. Early Twentieth Century, 1913–33 (Amendments 16–21)

Amendment 16 (1913). Authorizes income tax.

Amendment 17 (1913). Provides for popular election of senators.

Amendment 18 (1919). Establishes Prohibition; grants to Congress and the states concurrent power to enforce the amendment's provisions.

Amendment 19 (1920). Prohibits denial of right to vote on account of sex; authorizes congressional enforcement of the amendment's provisions.

Amendment 20 (1933). Provides that presidential term ends on January 20; provides rules covering situations in which president-elect or vice-president-elect dies before inauguration.

Amendment 21 (1933). Repeals Prohibition; prohibits importation of intoxicating liquors into a state in violation of that state's laws.

IV. Modern Amendments, 1951–92 (Amendments 22–27)

Amendment 22 (1951). Prohibits president from serving more than two terms.

Amendment 23 (1961). Grants District of Columbia right to vote in presidential elections; authorizes congressional enforcement of the amendment's provisions.

Amendment 24 (1964). Prohibits poll taxes for federal elections; authorizes congressional enforcement of the amendment's provisions.

Amendment 25 (1967). Provides that in case of removal or death of president, the vice-president shall become president; provides mechanism for filing vacancies in office of vice-president; provides mechanism for dealing with presidential disability.

Amendment 26 (1971). Prohibits denying right to vote on account of age to citizens over eighteen; authorizes congressional enforcement of the amendment's provisions.

Amendment 27 (1992). Provides that no law changing compensation for members of Congress shall take effect until after next House election.

V. Constitutional Amendment Proposals, 104th and 105th Congresses

Go to the web site http://thomas.loc.gov to research what happened to constitutional amendment proposals in the 104th and 105th Congresses regarding any of these issues: balanced budget, birthright citizenship, campaign finance, flag desecration, line-item veto, religious equality (school prayer), tax increase, term limits, victims' rights. Report on your selection, defining it and explaining its current status.

Adapted from Citizens for the Constitution, "Developing Standards for Constitutional Change," 1998, by permission of the publisher.

Student Handout 2

Constitutional Amendment Standards

1. Standard: Constitutional amendments should address matters of more than immediate concern that are likely to be recognized as of abiding importance by subsequent generations.
   Ask yourself: Does this amendment proposal address an issue that will continue to be of importance for many, many years?
2. Standard: Constitutional amendments should not make our system less politically responsive except to the extent necessary to protect individual rights.
   Ask yourself: Does this amendment proposal reflect a sensitivity on the part of its framers to the necessary constitutional balance between the power of the majority and the protection of the individual?
3. Standard: Constitutional amendments should be utilized only when there are significant practical or legal obstacles to the achievement of the same objectives by other means.
   Ask yourself: Is there no other, simpler way (for example, through the passage of a law or executive action) to achieve this amendment proposal's objectives?
4. Standard: Constitutional amendments should not be adopted when they would damage the cohesiveness of constitutional doctrine as a whole.
   Ask yourself: Does this amendment proposal seem to be in conflict with important constitutional principles?
5. Standard: Constitutional amendments should embody enforceable, and not purely aspirational, standards.
   Ask yourself: Can this amendment proposal be enforced and, if so, how likely is it to be enforced?
6. Standard: Proponents of constitutional amendments should attempt to think through and articulate the consequences of their proposals, including the ways in which the amendments would interact with other constitutional provisions and principles.
   Ask yourself: Have the consequences of the amendment proposal been fully explored in light of the rest of the Constitution?
7. Standard: Constitutional amendments should be enacted using procedures designed to ensure full and fair debate.
   Ask yourself: Has Congress exhaustively and fairly deliberated the amendment proposal?
8. Standard: Constitutional amendments should have a nonextendable deadline for ratification by the states so as to ensure that there is a contemporaneous consensus by Congress and the states that the amendment is desirable.
   Ask yourself: Has a limit been set on state consideration of the amendment proposal to allow against possible changes in congressional and public points of view regarding its desirability?

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Teaching Strategy

Putting the "You" in "We the People"

Kathleen S. Roberts and David T. Naylor

Update on Law-Related Education, 22.1, 1998, pp. 48–51. © 1998 American Bar Association.

A Note to Teachers: This strategy is based on a lesson Kathleen S. Roberts taught to 10th grade U.S. history students at Hughes Center High School in Cincinnati. It can be used with the article on page 22 and as either a warm-up or follow-up lesson to the strategy on page 44.

Background

The Preamble to the Constitution of the United States holds key elements to the study of American democracy. In essence, the Preamble functions as a mission statement setting forth the purposes that undergird our system of representative government. By beginning with the phrase, "We the people of the United States ...," the Preamble makes clear that it is "the people" who give our government its legitimacy.

The notion of who "we the people" are has changed since the Preamble was written, however, and the Constitution, as well as some of our law, also had to change to accommodate groups who had to vote in order for our government to be truly representative. The groups included African Americans, women, Native Americans, and persons ages 18–21, as well as people of many backgrounds who for various reasons could not qualify to vote in their states. "The vote," Jethro Lieberman writes, "is the means by which the people retain the power they have delegated to their government and by which strong popular sentiment is translated into law—subject to important constitutional restrictions against abridging fundamental rights. Without the vote, representative democracy collapses" (*The Enduring Constitution: A Bicentennial Perspective*, West 1987, p. 159).

In 1788, the franchise was limited mostly to white propertied males. This lesson allows students to recognize and deepen their understanding not only of how the "we" in the Preamble came to have a much more inclusive meaning, but how the enfranchisement process was carried across several generations in a well-deliberated and highly effective way that did not need to be, and was not, limited to constitutional amendment alone. Beginning with a short mission statement-building activity, the lesson next has students clarify the reasons for government stated in the Preamble. Then, in jigsaw format, students share how specific groups gained the right to vote, plotting key events on a time line. The lesson concludes by having students consider additional possibilities for extending the right to vote to other groups.

Kathleen S. Roberts is enrolled in a postbaccalaureate certification program at the University of Cincinnati and currently interns at a high school in the Cincinnati Public Schools.

David T. Naylor is a professor of education at the University of Cincinnati.

See the article on page 22.

Objectives

As a result of this lesson, students will

- Define what a mission statement is
- Explain how the Preamble functions as a mission statement for our system of government
- Explain in their own words the meanings of key phrases in the Preamble
- Name at least four groups that have gained the right to vote since the adoption of the Constitution in 1788
- Identify at least two ways those changes occurred
- Place in correct chronological order milestone events that expanded the right to vote
- Decide whether the right to vote should be extended to any other groups

Target Groups: Secondary students in U.S. history or American government classes. Also, with some adaptations, middle school students.
Time Needed: 2–3 classes
Materials Needed: Transparency (or copies) of the Preamble, teacher-prepared time line, Student Handout, scenes (from textbook or other source) depicting the signing of the Constitution and the Declaration of Independence, article "Developing Standards for Constitutional Change" pp. 22–27

Procedures

1. Before class begins, prepare a time line large enough to be easily seen by all students. Using equidistant segments, divide the time line into decades or 20-year blocks of time. Put 1780 at the left end of the time line and 2000 at the right end, with appropriate time markings above each time segment. Display the time line at the front of the room.
2. As students enter the room, display on the chalkboard or an overhead transparency three ideas for clubs students could form (e.g., "School Spirit Club," "Protect the Environment Club," "Computer Games Club").
3. Divide the class into five groups. Explain that the groups of students are to pretend that they are going to form one of these clubs. They will need to describe, in writing, what the purpose of their chosen club will be. Give them approximately five to seven minutes for this task.
4. Encourage students to share what they have written. Relate this to the concept of a mission statement. Then indicate you are going to introduce them to another mission statement, one written over 200 years ago. Display the Preamble on an overhead transparency. Have students compare it to what they have written.
5. Clarify the meaning of the first two phrases in the Preamble ("We the people" and "in order to form a more perfect union"). Then assign each group one of five phrases and ask the groups to explain what the phrase means in their own words and to identify at least one example of how our government does this. The phrases are (1) "establish justice," (2) "ensure domestic tranquility," (3) "provide for the common defense," (4) "promote the general welfare," and (5) "secure the blessings of liberty to ourselves and our posterity." Set a time limit for group deliberations. Provide access to dictionaries for difficult words.
6. Debrief in a large group setting, calling on each group to explain the meaning of the phrase assigned and the example(s) identified. Clarify and record each group's responses.
7. Call attention again to the phrase, "We the people of the United States." Refer students to pictures in their textbook (or other source) depicting the signing of the Declaration of Independence and the Constitution. Ask students to describe what they see, especially the characteristics of the people (e.g., males, white, well dressed). Point out that when the Constitution was ratified in 1788, the right to vote was very limited. In most instances, "We the people" referred to propertied white males. But the situation is different today. Indicate that the next part of this lesson will focus on how other groups got the right to vote.
8. As a reading assignment, provide each student with a copy of the article "Developing Standards for Constitutional Change" on pages 22–27. In a classroom discussion later, emphasize the meaning and purpose of each standard listed. Explain that the successful enfranchisement to date of many Americans will be discussed within the framework of how well the process has conformed with these standards.
9. Give students a copy of the Student Handout. Assign each student one of the five reading selections—A, B, C, D, or E. Explain that each reading reveals how the right to vote was expanded for a particular group of people, thus expanding the meaning of "We the people." Provide time for students to read the directions at the top of the handout and their selection individually. Then tell them they will be meeting again in small groups in which they will (1) clarify what they have read, (2) summarize in no more than five words how voting rights increased, (3) identify the method or process used for this, and (4) list the standards with which the method or process complied.
10. As a group finishes, have a member come to the front of the room, write at the appropriate place on the time line the summary words (no more than five) based on the group's reading selection, and pass out the final list of standards decided upon by the group.
11. Extend the discussion by having students consider other groups that currently lack the right to vote. For example, a 1997 statewide issue in Maine asked voters to consider extending the right to vote to some groups of mentally ill persons. In many states, teenagers can drive but not vote. Resident aliens cannot vote, no matter how long they have lived in this country.
12. Conclude by having students write a position paper indicating why they feel one of the groups discussed in this segment should or should not have the right to vote, and how the question should be deliberated and finally answered.

Answers for Page 57

1. Assembly, Speech
2. Petition
3. Press
4. Speech
5. Speech
6. Religion, Assembly

Student Handout

Tracing the Growth of Voting Rights

When the United States Constitution was adopted in 1788, the meaning of the phrase "We the People" was different than it is today. In most of the states, only white adult males over 21 years of age who owned property could vote. Over the years, that situation has changed. These readings reveal how voting rights have been enlarged for particular groups of voters. After reading your assigned selection, identify the group, the time period, and the main way voting rights expanded. In no more than five words, summarize how voting rights increased for this group. Be prepared to write this information on the time line at the front of the room.

Reading Selection A

The Civil War (1861–1865) helped African Americans gain important rights. On January 1, 1863, President Lincoln issued the Emancipation Proclamation. It declared that "all persons held as slaves within any state ... in rebellion against the United States, shall be ... forever free." This action helped change the war to a crusade against slavery. Following the Civil War, three amendments were added to the U.S. Constitution. The Thirteenth Amendment, ratified in 1865, made slavery illegal throughout the United States. The Fourteenth Amendment, ratified in 1868, made former slaves citizens of both the United States and the state in which they lived and guaranteed to all persons "the equal protection of the laws." The Fifteenth Amendment, ratified in 1870, provided that no citizen may be denied the right to vote on account of race.

Reading Selection B

Throughout the 1800s and early 1900s, women struggled to obtain the right to vote. At that time, many people believed the primary role of women was to maintain the home and family. They felt women should not vote or become involved in politics. To do so, they argued, would cause women to ignore their duties in the home and to be corrupted by the evils of society. Despite strong opposition, women's organizations fought for and won the right to vote in various states. Prior to 1920, women had secured full or partial voting rights in most but not all states. Twenty states still denied women the right to vote. That situation changed when the Nineteenth Amendment was ratified in 1920. It provides that "The right of citizens ... to vote shall not be denied or abridged ... on account of sex." Since then, women have become an increasingly important force in American politics.

Reading Selection C

As originally written, the U.S. Constitution does not specify a required age to vote. This decision was left to the states. Prior to 1971, most states required persons to be at least 21 years of age to vote. The Vietnam War (1957–1975) helped change that situation. Eighteen-year-olds were drafted, and thousands of Americans under the age of 21 died in that conflict. Many Americans argued that if 18-year-olds were old enough to fight and die for their country, they should also be able to have a say in how it is governed. Supporters of lowering the voting age gave other reasons as well. They pointed out, for example, that 18-year-olds could

raise families, hold jobs, be taxed, and be tried in adult courts. The Twenty-sixth Amendment, ratified in 1971, lowered the voting age to 18. Since then, all citizens who are at least 18 years of age are eligible to vote in all federal and state elections.

Reading Selection D

Constitutionally, Native Americans are considered to be separate nations, with distinct political rights. But in practice they have long been treated as outsiders in their native land. European settlers frequently regarded Native Americans as a nuisance and an obstacle to white migration and settlement. They forced Native Americans to sign treaties giving up rights to their lands and relocate on specially designated reservations. Until the 1900s, most Native Americans were not considered to be American citizens. That situation changed after World War I. In 1924, Congress passed the Snyder Act, which made all Native Americans citizens and gave them the right to vote.

Reading Selection E

The Fifteenth Amendment, ratified in 1870, provided that no citizen could be denied the vote on account of race in any state or federal election. Yet states used a variety of other means to prevent African Americans from voting. They set requirements for voting that appeared to apply to all people but, in reality, did not. For example, some states required all voters to pay a poll tax (a special tax to vote) and to pass a literacy test (to demonstrate knowledge of the Constitution). In passing these laws, they also adopted a "grandfather clause." Any man whose father or grandfather had been eligible to vote prior to January 1, 1867, did not have to pay the tax or pass the test. Since African Americans were not eligible to vote at that time, this meant that they, but not most white citizens, were required to pay the tax and pass the test. In addition to legal restrictions, terrorist groups such as the Ku Klux Klan used threats and violence to intimidate African Americans and keep them from voting.

Dramatic changes occurred during the Civil Rights Movement of the 1950s and 1960s. In 1964, the Twenty-fourth Amendment abolished the poll tax in all federal elections. Two years later, the U.S. Supreme Court held that poll taxes could not be used in state elections either because they discriminated against the poor. In 1965, Congress passed the Voting Rights Act. It gave the federal government wide powers to oversee elections in states that had a record of discriminating against voters. This law did much to eliminate voting abuses. African-American voter registration increased dramatically. In 1975, Congress banned the use of literacy tests for all elections.

Student Forum

Should Public School Prayer Be Allowed?

Update on Law-Related Education, 22.1, 1998, pp. 52–55. © 1998 American Bar Association.

A Note to Teachers: This forum is a student-organized role play that will extend student thought on the growing controversy about whether prayer should be allowed in public schools. Students will be asked to incorporate information provided in the *Update* articles with independent research to form opinions about this controversy.

Students are responsible for the forum. Your role is to provide copies of materials and serve as a consultant. Roles have been developed to bring out diverse perspectives and illustrate the complexity of this issue. You might want to select relevant readings and use teaching strategies that will give students the background needed to participate in the forum. Articles about this issue can be found in recent newspapers and magazines.

The forum should take from two to five class periods, depending on the number of roles and the amount of discussion, and whether or not the class chooses to invite guest speakers. Independent research will elevate the quality of student presentations and overall scholarship. You or your students may elect to use all the sample roles provided, or you may revise or replace them. Make sure that the roles represent diverse philosophical viewpoints.

To the Student

This forum will give you an opportunity to take responsibility for your own learning. It is similar to a panel discussion in which people come together to debate issues. The activity will help you explore other people's views on the complex controversy of whether prayer should be allowed in public schools.

Freedom of religion is the right of persons to believe in and practice whatever faith they choose; it is also the right to have no religious beliefs at all. These rights are found in the First Amendment of the U.S. Constitution. Various court rulings have interpreted this amendment clause to mean that the government, which includes agencies such as schools, may not promote or give special treatment to any religion. For example, the courts have struck down different school prayer programs, as well as programs that teach the Bible.

In the last decade, there have been signs that the Supreme Court may be rethinking its stand on whether teaching about religion in public schools is constitutional, and various decisions have supported the religious liberty rights of students wanting, for example, to hold meetings of religious clubs on school grounds. The result has been considerable confusion about just what students' religious rights might be at school. Is religious freedom denied when students are not permitted to have a graduation invocation and benediction? Is the freedom to have no religion violated if nonbelievers have to listen?

Here are some questions you might consider during the discussion:

- What exactly does the First Amendment say regarding freedom of religion?
- To what extent should the beliefs of the nation's founders influence today's interpretations of religious freedom?
- Why might public attitudes tend toward supporting prayer in public schools?
- Should public attitudes influence courts' interpretations about freedom of religion?
- What are the subtle inconsistencies in the facts you learn during the forum? For example, (1) the American public overwhelmingly supports freedom of religion, even for the most extreme groups, and (2) four-fifths of Americans would allow prayers at graduation, and almost two-thirds believe teachers should be allowed to lead prayers at school.

How to Conduct the Forum

1. The class selects 10 students to serve on the panel.
2. All students complete the forum ballot and submit it to the panel.
3. Students form groups to develop or adapt forum character roles.
4. Students identify community

members to invite to participate in the forum. Community members may represent themselves, serve as coaches for the panelists, or play one of the roles. Include your teacher in making plans to invite guest speakers.

5. The panel selects a facilitator and clerk from among student volunteers. The facilitator coordinates speakers and maintains order if necessary. The clerk records key ideas expressed.
6. The panel conducts the forum.
7. All students should once again complete the forum ballot. Then the panel should review, compare, summarize, and report the results to the class.
8. Students discuss how the forum presentation might have affected their opinions.

Getting Ready

To prepare for this forum, read all the articles in this *Update* edition that have to do with freedom of religion, and review materials available through resources such as those listed on page 58. Contact professionals who can help you prepare for the forum or who might agree to participate; for example, your school principal, school lawyer, and counselors; clergy members; professors specializing in First Amendment issues; local representatives of organizations such as the American Civil Liberties Union (ACLU); and local lawyers, judges, and other legal professionals.

Background

In societies with official state religions, school can be much different than in societies where church and state are separated by law. Such is the case when comparing colonial America to the United States today. During colonial times, church officials performed many of the roles that our schools play. Ministers often held classes in their homes for students who could afford a fee. Those who couldn't were taught at home. Lessons in religious beliefs and obedience were common for all young people.

Even though American colonists were deeply religious and came here for religious freedom, they were often intolerant of other groups and would impose penalties on those who did not follow a colony's official religion. Roman Catholics and Jews could not vote in most colonies. To be a citizen in Georgia, a colonist had to belong to the Anglican Church. Thomas Jefferson, James Madison, and most of the founders favored separation of church and state, and this was guaranteed by the Constitution's First Amendment.

Eventually, the nation's educational efforts evolved into a public system that more and more eliminated reference to religious subjects as well as religious rites such as prayer. Yet church and state aren't entirely separated in America, starting with our nation's motto: In God We Trust. With public opinion and the courts recently seeming to become more tolerant of certain religious activities in public schools, this forum will explore contemporary opinions about how far, and in what manner, prayer might be protected there. The opinions are largely taken from the arguments of Justices Kennedy, Scalia, Blackmun, and Souter in *Lee v. Weisman*, 505 U.S. 577 (1992).

Introduction

Roles The following people have agreed to discuss their views and positions in a panel discussion. They represent the interests of various individuals who are involved in debate about school prayer. Students playing the roles should have five minutes to present their positions and to answer questions from the audience. Students in the audience may play the role of reporters covering the discussion and residents of the community. When questioned by the audience, the students should answer in a manner consistent with their roles.

Role 1: Ahmed Beloian Hi! I'm Ajay Beloian, a senior at this high school, and I don't see why it is unconstitutional to allow prayers both in the classroom and at school activities, as long as participation is voluntary and the prayers are nonsectarian. Everyone can join in if no one faith is sponsored, and students who for some other reason don't want to pray can just quietly wait for the prayer to finish. I've never met anyone offended by prayer, have you? In my grandparents' day, morning prayer came from the Book of Psalms, and they don't remember a single complaint either. It's not as if any school would prepare a book of its own prayers for everyday use, and any clergy composing a special prayer for a school function will be a professional who knows what's right for a nondenominational setting. To cover any objections, all that is needed is an announcement prior to the prayers saying that, while everyone is asked to rise during the prayer, no one has to join in, and just because they've stood up doesn't mean anyone will assume that they have joined in.

Role 2: Ira Ellis My name is Ira Ellis, and I have some real problems with the idea of having any religious observance whatever at the public school, even though, as a rabbi, I'm very interested in the spiritual development of the students in this community. Look at it this way. Are school administrators in any position to choose who should lead prayers at school and what the content of those prayers should be? And yet, this is what we, in fact, force them to do when we ask for prayer in the classroom or at school events. School administrators are employees of our local government. An important First Amendment principle is that it is not the part of government to arrange for or to compose prayers for anyone. Nothing could be clearer. Instead, what I'm hearing is that, in order to avoid establishing religion in the schools, but to make sure religion

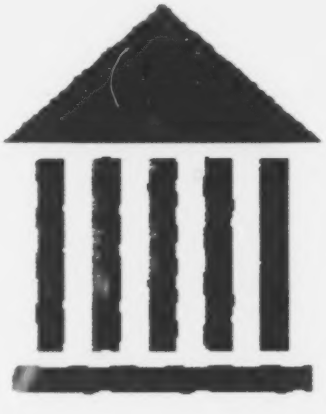
takes place there in the form of prayer, at its own discretion the government may establish a nonsectarian civic religion of its own choosing. This argument defies logic and the First Amendment.

Role 3: Sanford Cole My name is Sanford Cole, and I'm a counselor working in the inner-city schools as part of the Building Better Youth program. I'm for prayer, and history backs me up. There's a precedent for nonsectarian prayer in many government ceremonies and actions in our country. The Declaration of Independence appeals to "the Supreme Judge of the World" and vows reliance on "the protection of divine providence." We've had prayer at presidential inaugurations and at congressional and Supreme Court opening sessions since George Washington, the First Congress, and John Marshall. We need to interpret the establishment clause in ways that do not invalidate long-standing traditions of our nation and compromise the classroom as a environment for developing high moral values. To deprive our schools of the unifying mechanism of public prayer to spare nonbelievers what is a minimal inconvenience of standing or sitting in respectful nonparticipation is senseless. If there is a person whose religious faith and values have been compromised by waiting through a prayer, then how strong could that faith and those values be?

Role 4: Frances Lara I'm Frances Lara, a psychology professor at a nearby state university. It simply isn't true that people cannot be coerced by being forced to passively sit by while prayers are spoken. School sponsorship and supervision of prayer place public as well as peer pressure to participate, and this may violate what a student believes, constituting pressure. Even though that pressure may be indirect, it still has a coercive effect because peers and teachers are present, and, at times, the prayers represent long-held community beliefs and traditions that government, under the First Amendment, may not require attendees to conform to in any manner. What's more, the First Amendment obligates government to guard and respect the diversity of religious beliefs and to respect the lack of belief too, which it cannot do if it sanctions prayer prepared by anyone of any denomination for use in the school. The question doesn't turn on how likely it is that someone's beliefs will be compromised because government may not compromise them at all; it turns, instead, on what is allowable governmental activity, and sponsoring prayer simply is not.

Role 5: Angelica Thomas I'm Angelica Thomas, and my six children attend the public schools of this community. To me, prayer is just like free speech—Americans have always had that right, and they should be able to pray at school if they want. Besides, we are used to hearing the views of all sorts of people—we're taught right in school that it's good for us. If all students—believers, agnostics, and atheists alike—are expected to tolerate information and ideas their families don't agree with in their textbooks and other media, which teachers are allowed to use for instruction, then why can't they be expected to tolerate prayer? I'm very concerned about how our community is going to fight the unsolicited electronic filth that is coming into our homes. One of our greatest tools is our school system, which can help frame students' activities in a devotion to the high ethical principles that all religions have in common. What is more likely to harm these kids—pornography on the Internet, videos about drug abuse and venereal disease, photos of the mangled war dead in Europe and Africa, or prayer? End of story.

Role 6: Gertrudis Cruz My name is Gertrudis Cruz. As a debate teacher, I'm deeply disturbed by some of the faulty reasoning being used here. The First Amendment protects our freedoms of speech and religion differently. Freedom of speech is protected by allowing its fullest expression and government participation. Religion is protected by disallowing any government intervention. And to say that students have a choice of whether to pray in school or attend school functions with prayer is preposterous. What affords government the power to deprive them, without just cause, of the opportunity to participate in any school activity? What if the government does have precedents of religious ceremonies and actions? It also has precedents of institutionalized slavery and disenfranchisement of women, African Americans, and Native Americans. Might we ever consider repeating these mistakes because they happened before? A precedent doesn't necessarily have the compelling force of a good argument based in sound logic.



Forum Ballot

Should Prayer Be Allowed in Public Schools?

Circle the choice that best answers how you feel about the issue of prayer in public schools.	strongly agree				strongly disagree
1. Religious freedom is impossible unless government guards and respects individuals' religious beliefs.	1	2	3	4	5
2. Starting each school-day morning with a prayer is consistent with the religion clauses of the First Amendment, so long as the prayer is non-sectarian and no one is forced to say it.	1	2	3	4	5
3. School prayer should be allowed only if an ecumenical council of local clergy works with parents to develop a program acceptable to all denominations as well as to nonbelievers.	1	2	3	4	5
4. If school prayer is banned as offensive and/or coercive with respect to some students' beliefs, then all ideas and materials, in any medium, that offend any student's beliefs should be banned, including scientific theories that contradict the Bible, graphically violent images, nude art, music, and dance.	1	2	3	4	5
5. Students feel peer pressure to participate in school prayer both in the classroom and at school events, so their beliefs can be coerced if they are forced to do so.	1	2	3	4	5
6. If students' beliefs prohibit them from attending school events at which prayer is spoken, it is fair to expect them not to attend those events.	1	2	3	4	5
7. Having nonsectarian invocations and benedictions only at school events is consistent with the religion clauses of the First Amendment, so long as professional clergy prepare and present those prayers.	1	2	3	4	5
8. It is unconstitutional for school officials or their agents to preserve or transmit religious beliefs in any school setting at any time.	1	2	3	4	5
9. The Constitution should be amended to give prayer the same kind of protection as free speech.	1	2	3	4	5
10. Prayer should be abolished at all governmental functions, including presidential inaugurations and openings of congressional and Supreme Court sessions.	1	2	3	4	5

Write a short answer. How do you interpret what the First Amendment says about freedom of religion? What is the government's role in religion?

Teaching Strategy

Using the First Amendment Freedoms Poster

Update on Law-Related Education, 22.1, 1998, pp. 56–57. © 1998 American Bar Association.

Background

In a sense, the five freedoms protected in the First Amendment of the Constitution—freedom of speech, press, religion, assembly, and petition—are the heart of American democracy. Yet many people do not understand how important these constitutional freedoms are to the American way of life. The greatest threat to a democratic society is to let the government or the majority dictate what people are allowed to believe, think, or say. Throughout this lesson on the First Amendment, encourage students to think about what their lives, both now and in the future, would be like without the First Amendment freedoms.

Objectives

- To paraphrase the content of the First Amendment
- To identify and explain the five freedoms included in the First Amendment
- To recognize how the provisions of the First Amendment have been challenged throughout American history and are still being challenged today

Materials: poster "First Amendment Freedoms," Student Handout

Definitions

Freedom of speech—the right to speak one's mind, whether privately or publicly, without fear of government restriction or retribution

Freedom of the press—the right to report on government actions and events without fear of official censorship or retribution

Freedom of religion—the right to believe or not to believe and to practice one's faith without government interference

Freedom of assembly—the right of people to act in groups

Freedom of petition—the right of people to hold the government accountable for its actions

Procedures

1. Display the poster and have a student volunteer read the title. Explain that the freedoms of speech, press, religion, assembly, and petition are protected by the First Amendment of the Bill of Rights in the Constitution. Read aloud the First Amendment. (A copy of the text can be found on page 4.)
2. Have a student volunteer read the five freedoms listed on the poster—speech, press, religion, assembly, petition. Ask students what they think each of these freedoms means. You may wish to have them write their answers and then add to those answers during the class discussion. Have them keep their answers for future reference.
3. Have students study the poster and identify the objects used to symbolize First Amendment freedoms. Ask them how the objects are related to these freedoms.
4. Encourage students to offer any examples they are familiar with that demonstrate challenges to the freedoms of the First Amendment (for example, attempts to censor the Internet, book bannings in school or public libraries, opposition to Ku Klux Klan rallies). Ask students which of the five freedoms applies to each of the examples. More than one freedom may apply to each. (Internet—freedom of speech, freedom of the press; book bannings—freedom of speech; rallies—freedom of assembly, freedom of speech)
5. Distribute copies of the Student Handout. Read through the scenarios with students. Then ask them to identify which of the First Amendment freedoms might apply in each situation. Point out that more than one freedom might apply. You may wish to have students work in pairs or small groups. Explain that they must be able to explain why they chose the freedom(s) they did. When finished, discuss as a class the scenarios and students' choices and reasoning. (Possible answers appear on page 49.)
6. At the conclusion of the lesson, suggest that students summarize their thoughts by writing a paragraph explaining why they think First Amendment freedoms are or are not important.

The "First Amendment Freedoms" poster identifies the five freedoms that comprise the First Amendment of the Constitution—speech, press, religion, assembly, and petition. Use the poster as a teaching tool to introduce and reinforce the First Amendment and how it protects freedom of expression. Also, see "First Amendment Reflections" on page 6.

Student Handout

First Amendment Freedoms in Action

Read each scenario. Circle the First Amendment freedoms—speech, press, religion, assembly, petition—that you think apply to the situation. One or more freedoms may apply. Then explain why you chose the freedom(s) you did.

1. To protest a local developer's plans to build a shopping mall, a community group organizes a demonstration at the town hall.

   Speech Press Religion Assembly Petition

   _____

   _____

2. A person who is concerned about harassment by the Internal Revenue Service requests access to that agency's records.

   Speech Press Religion Assembly Petition

   _____

   _____

3. During a murder trial, the court issues a subpoena allowing police to search the office of a newspaper reporter who interviewed the defendant in the case.

   Speech Press Religion Assembly Petition

   _____

   _____

4. An artist paints a wall mural that shows, among other things, the founders of the nation in the nude.

   Speech Press Religion Assembly Petition

   _____

   _____

5. A group of people concerned about the sexual and violent content of television programs wants the government to regulate the content of television programs.

   Speech Press Religion Assembly Petition

   _____

   _____

6. Muslim students who have formed an after-school group want to use a classroom in their school for their weekly meetings.

   Speech Press Religion Assembly Petition

   _____

   _____

Resources for Teaching

Multimedia Resources on the First Amendment

Paula A. Nessel

Update on Law-Related Education, 22.1, 1998, pp. 58–61. © 1998 American Bar Association.

Books

Exploring the Constitution: Freedom of Speech, Press, and Assembly by Darien McWhirter

Part of a series for young adults, this book reviews the nineteenth-century discussion of the right to free speech as background to twentieth-century Supreme Court decisions. It proceeds to explore modern interpretations and applications of freedom of speech, press, and assembly; discusses and provides excerpts from significant Supreme Court decisions; and raises questions for discussion. Includes a glossary, bibliography, and full text of the Constitution. (1994) $29.95. Contact Oryx Press, 800/279-6799.

Exploring the Constitution: The Separation of Church and State by Darien McWhirter

Part of a series for young adults, this book explains the evolution of the concept of the separation of church and state, explores the interpretations and applications of the law, discusses and provides excerpts from significant Supreme Court decisions, and raises questions for discussion. Includes a glossary, bibliography, and full text of the Constitution and "A Bill for Establishing Religious Freedom in Virginia." (1994) $34.50. Contact Oryx Press, 800/279-6799.

The First Amendment: Freedom of Speech, Religion, and the Press by Leah Farish

Intended for ages 11 and up, this book examines the historical background of the First Amendment and the meaning of each of its parts. Addresses current controversies and cases relevant to the First Amendment and provides full text of the Constitution and Bill of Rights and a glossary and bibliography. (1998) $18.95. Contact Enslow Publishers, Inc., 44 Fadem Rd., Box 699, Springfield, NJ 07081, 973/379-8890.

Freedom, Fairness & Equality

Freedom of expression and religion are among the rights explained through easily understood background research about constitutional case law. Intended for both teachers and lawyers acting as resources in the classroom, this book uses case summaries and text to discuss historically significant information and recent Supreme Court decisions. (1994) $12.00. Contact Phi Alpha Delta Public Service Center, P.O. Box 3217, Granada Hills, CA 91394-0217, 818/368-8103, E-mail: padpscla@aol.com.

Paula A. Nessel is program manager for school programs in the ABA Division for Public Education in Chicago.

Booklets/Pamphlets

American Civil Liberties Union (ACLU) has a variety of "briefing papers" suitable for high school and above and "briefers" aimed at high school students. Topics include "Church and State," "Hate Speech on Campus," "Your Right to Express Yourself Freely," and "Your Right to Religious Liberty." Call 800/775-ACLU or find them free on the World Wide Web at www.aclu.org.

The First Amendment: The Amendment That Keeps Us Free

An eight-page booklet explaining each of the freedoms itemized in the amendment. (publication #93-F03) Free. Contact The Freedom Forum First Amendment Center at Vanderbilt University, 1207 18th Avenue South, Nashville, TN 37212, 615/321-9588.

A Parent's Guide to Religion in the Public Schools

Uses questions and answers to help parents understand the religious liberty rights of students and the appropriate role of religion in the public school curriculum. Free, in limited quantities. Contact The Freedom Forum First Amendment Center at Vanderbilt University, 1207 18th Avenue South, Nashville, TN 37212, 615/321-9588.

Religious Freedom: Belief, Practice, and the Public Interest

Part of the Public Issues series, this booklet (order no. 358-6) and its Teacher's Guide (order no. 359-4) are intended to help students analyze and discuss the dilemmas related to the issue of religious freedom. Beginning with a definition of religion, the booklet then describes the historical background of religious freedom and reviews significant relevant Supreme Court cases. (1991) $3.00 student; $2.00 teacher. Contact Social Science Education Consortium, 5541 Central #205, P.O. Box 21270, Boulder, CO 80308-4270, 303/492-8154.

Teaching About Freedom: A Teacher's Guide to the First Amendment
A 23-page booklet with teaching ideas, discussion questions, and classroom handouts. (publication #94-W28) Free. Contact The Freedom Forum, 800/830-3733.

Curriculums/Lessons

Advertising and Free Speech
Students balance a corporation's right to free speech versus the state's right to regulate commercial speech. (#30110C9) $5.95. Contact Constitutional Rights Foundation, 800/488-4CRF.

Constitutional Rights of Juveniles and Students: Lessons on Sixteen Supreme Court Cases
Introduces students to landmark cases on religion and the establishment clause, freedom of expression, due process, and other rights of the accused and equal protections of the laws. (1994) $10.00. Contact ERIC Clearinghouse for Social Studies/Social Science Education, 800/266-3815.

Education for Freedom
Lessons on the First Amendment by the First Amendment Congress for both elementary (K–6) and secondary (6–12) levels. The newest version includes lessons on cyberspace and the separation of church and state. Contact The Freedom Forum First Amendment Center at Vanderbilt University, 1207 18th Avenue South, Nashville, TN 37212, 615/321-9588.

The First Amendment: America's Blueprint for Tolerance
Uses historical and modern examples to explore the First Amendment and three of its most important rights—freedom of religion, of speech, and of the press. (1995) #B1551-95 student text $7.95; #B1554-95 teacher's resource $14.95. Contact Close Up Foundation, 800/765-3131.

Freedom of Expression in Special Places
Explains that schools, military bases, and prisons are places where the First Amendment presents special problems and analyzes how the First Amendment applies to school newspapers, using *Hazelwood v. Kuhlmeier* in the discussion. Contact Margaret Fisher, Office of Administrator for Courts, 1206 Quince St., Olympia, WA 98504-1170 or download from Web site: www.wa.gov/courts/educate/home.htm

From the School Newsroom to the Courtroom
Contains a series of interactive lessons on the First Amendment's protection of free expression, taking an in-depth view of the landmark 1987 Supreme Court decision of *Hazelwood v. Kuhlmeier*, in which three high school seniors took their principal to court over censorship of the school newspaper. (1989) $7.95. (#50030C9) Contact Constitutional Rights Foundation, 800/488-4CRF.

Lesson Plan of the Month—
- "Is There Room for the Menorah, a Nativity Scene, and Other Religious Symbols in the Classroom?" Series V, No. 4 (1996)
- "Newly Free to Hate" Series I, No. 4 (1992)
- "To Pray or Not to Pray" Series III, No. 2 (1994)
- "A Religion? Or a Cult? What's the Difference? And What Rights Do Religious Cults Have?" Series V, No. 8 (1997)
- "Rock & Roll and Freedom of Speech" Series I, No. 3 (1992)
- "TV, or Not TV: Cameras in the Court" Series IV, No. 4 (1995)

Each classroom activity is accompanied by issues for discussion, additional activities, relevant law, and key concepts and vocabulary. $3.00 each. Contact Phi Alpha Delta PSC, P.O. Box 3217, Granada Hills, CA 91394-0217, 818/368-8103, E-mail: padpscla@aol.com

Religion in the Schools
Identifies the requirements of the Equal Access Act and the tension between the First Amendment's free exercise clause and establishment clause and then uses role play to address the difficulties faced by administrators in deciding whether or not to permit noncurriculum-related groups to meet on campus. Contact Margaret Fisher, Office of Administrator for Courts, 1206 Quince St., Olympia, WA 98504-1170 or download from Web site: www.wa.gov/courts/educate/home.htm

A Teacher's Guide to the Bill of Rights Poster Series
A collection of lessons for elementary, middle, and high school students to learn about Bill of Rights concepts portrayed in a series of posters (see posters below). [The lessons can be used independent of the posters.] The First Amendment topics addressed are freedom of religion, freedom of speech, and the right to assemble. (1991) PC#497-0029. $5.00. Contact American Bar Association, 800/285-2221.

Tolerance for Diversity of Beliefs: A Secondary Curriculum Unit
Explores issues associated with freedom of belief and expression. Addresses freedom of speech and minority rights through case studies, role playing, simulations, and mock interviews. (1993) Order no. 374-8. $17.95. Contact Social Science Education Consortium, 5541 Central #205, P.O. Box 21270, Boulder, CO 80308-4270, 303/492-8154.

Mock Trials

Hudson v. The Washington Post
The issue is whether the best interests of a child and a father's right to custody outweigh a reporter's and newspaper's right to maintain the confidentiality of their sources. (PC#317-0120) $4.00. Contact American Bar Association, 800/285-2221.

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Jefferson and Paine v. Liberty High School
At issue—does a school-sponsored newspaper merit the same freedom of the press/First Amendment protections as does a regular newspaper? $5.00. Contact Marilyn Cover, Classroom Law Project, 6318 SW Corbett Ave., Portland, OR 97201-3606, 503/245-8707. E-mail: cover@lclark.edu

People v. Bell
Conflict between townspeople and a newcomer religious group results in charges of incitement and arson. (#70020C9) $3.95. Contact Constitutional Rights Foundation, 800/488-4CRF.

People v. Stover
A private security guard's actions during an alleged break-in raise issues about use of force, freedom of expression, and the elements of a hate crime. (#70019C9) $3.95. Contact Constitutional Rights Foundation, 800/488-4CRF.

People v. Willow
The distribution of an alternative newspaper and an exchange in a parking lot lead to charges of selling drugs and inducing a minor to take drugs. (#70016C9) $3.95. Contact Constitutional Rights Foundation, 800/488-4CRF.

Periodicals

"The Battle Over the National Endowment for the Arts." *Bill of Rights in Action*, vol. 13, no. 2, spring 1997
Focuses on various controversies surrounding art—ranging from Nazi Germany's suppression of modern art to modern controversies about the National Endowment for the Arts and popular music lyrics. Contact Constitutional Rights Foundation, 800/488-4CRF.

"Free Press vs. Fair Trial: The Lindbergh Baby Kidnapping Case" and "Religious Rights in Conflict." *Bill of Rights in Action*, vol. 10, no. 1, fall 1993
An exploration of the issues relating to the conflict between a free press and fair trial and between the free exercise and establishment clauses of the First Amendment. Contact Constitutional Rights Foundation, 800/488-4CRF.

"Separating Church and State." *Bill of Rights in Action*, vol. 13, no. 4, fall 1997
Explores the issues surrounding the separation of church and state, focusing on the development of the doctrine in the United States; the manner in which the ancient Roman Empire (a multiethnic, multireligious society) handled religious diversity; and the recent U.S. Supreme Court case involving state aid to parochial school students. Contact Constitutional Rights Foundation, 800/488-4CRF.

Posters

Bill of Rights Posters—a series of five awardwinning black-and-white posters (11"H x 28"W)

- "Freedom of Speech" shows Rev. Martin Luther King, Jr. waving to the crowds in Washington, D.C., with the caption, "The Bill of Rights guarantees freedom of speech. Otherwise, it might all have been a dream." (PC#468-0031)
- "Religious Freedom" shows an Amish man in front of a rural background with the caption, "The Bill of Rights guarantees religious freedom. Otherwise, he wouldn't have a prayer." (PC#468-0034)
- "Right to Assemble" shows suffragettes marching and carrying a banner, "I wish ma could vote," with the caption, "The Bill of Rights guarantees the right to assemble. Otherwise, they might still be that one step behind." (PC#468-0030)

See *Teacher's Guide to the Bill of Rights Poster Series* above. $4.95 each. Contact American Bar Association, 800/285-2221.

"Which One Has Been Censored?—All of Them"
Full color—displays ten popular works censored in the United States, from *Little Red Riding Hood* to *Webster's Dictionary* to *Playboy*. (37"H x 24"W) Item #8010. $8.95. Contact 800/775-ACLU.

Software

Docket on Disk: A Digest of Supreme Court Decisions from 1977 through 1993
Explore easily searchable summaries of nearly 400 important U.S. Supreme Court cases chosen for their significance to 7–12 grade students. Browse through legal topics via search terms such as "First Amendment," "copyright law," "communications law," and "freedom of information." Or look up specific cases such as *Hazelwood School District v. Kuhlmeier* and *New Jersey v. T.L.O.* PC#497-0080. $35.00. Contact American Bar Association, 800/285-2221.

Express Yourself
An interactive software program designed to inform students about their First Amendment rights. It utilizes video, animation, graphics, and text. Free ($10 donation requested). Call the American Civil Liberties Union at 212/549-2560 or download the software from the ACLU Web site: www.aclu.org

Videotapes

"Dangerous" Songs: Censors, Rock, and the First Amendment
Interviews with songwriters, teen-age listeners, parents, and other concerned individuals are used to explore the issues surrounding song lyrics deemed racist, obscene, and sexist and their protection by the First Amendment. (1991) 18

minutes. (RH767V-17) $67.32. Contact Social Studies School Service, 800/421-4246.

For Which It Stands: Flag Burning and the First Amendment

Presents the stories of two men whose convictions, experiences, and viewpoints set them apart on the issue of flag burning. One is a Vietnam War veteran and former P.O.W., and the other is a man whose flag burning as a form of protest led to a 1989 Supreme Court case. Includes a teacher's guide. (1992) 25 minutes. (B1141T) $59.95. Contact Close Up Foundation, 800/765-3131.

Free to Be?

Produced by the Anti-Defamation League (ADL) in cooperation with the New York Council for the Humanities, this video raises questions about diversity and conformity in American life. It examines the concepts of ethnic, religious, and political differences and how our society has coped. An open-ended discussion stimulator. Includes a discussion guide. 28 minutes. $50.00. To order, call 800/343-5540.

One Nation Under God?—School Prayer and the First Amendment

Highlights the 1985 *Wallace v. Jaffree* Supreme Court case and enables students to make their own decisions about the ongoing debate over prayer in the public schools. Includes teacher's guide with history of freedom of religion in the United States. (1995) 30 minutes. (#B1666T) $59.95. Contact Close Up Foundation, 800/765-3131.

Profiles of Freedom: A Living Bill of Rights

Interviews with key players and audio footage of actual arguments made before the Supreme Court on four landmark cases. Profiled are Mary Beth Tinker, who led an armband protest against the Vietnam War at her school; Joey Johnson, who burned the American flag as a form of protest; Ernesto Miranda, who confessed to a crime without being told he had the right to remain silent; and Bridget Mergens, who wanted to hold a Bible study at her school. Includes teacher's guide. (1997) 28 minutes. (#B2018T) $59.95. Contact Close Up Foundation, 800/765-3131.

Skokie: Rights or Wrong—A Film About Freedom of Speech

This video profiles the turmoil created when the American Nazi Party called upon the ACLU to defend its right to hold a rally in Skokie, Illinois, where many residents were survivors of Nazi concentration camps. (1987) 28 minutes. $99.00 (Also available for rental). Contact New Day Films, 22D Hollywood Ave., Hohokus, NJ 07423, 201/652-6590.

Web Sites

ACLU Freedom Network

http://www.aclu.org

The American Civil Liberties Union's site contains information on student rights (full text of "Ask Sybil Liberty" flyers and free downloading of "Express Yourself" software), news and events, and a wide variety of information on First Amendment and other rights issues.

First Amendment Cyber-Tribune (FACT)

http://w3.trib.com/FACT/

The *Casper Star-Tribune* in Casper, Wyoming, hosts this site, which provides information on all the liberties guaranteed by the First Amendment. The site includes a list of over 80 Weblinks for additional sites dedicated to First Amendment issues.

Freedom of Expression at the National Endowment for the Arts

http://www.csulb.edu~jvancamp/intro.html

Julie Van Camp, associate professor of philosophy at California State University, Long Beach, provides course material; an extensive bibliography of books, articles, and legislative materials; and many links to other on-line resources examining related free speech topics.

The Freedom Forum On line

http://www.fac.org/default.asp

A wide variety of information on current events and issues involving the First Amendment.

Project Censored

http://censored.sonoma.edu

Sonoma State University at Rohnert Park, California, sponsors this site, which explores and publicizes the extent of censorship.

Reporters Committee for Freedom of the Press

http://www.rcfp.org

The Reporters Committee for Freedom of the Press in Arlington, Virginia, sponsors this site as a service to reporters. The site includes a First Amendment Handbook with information about a variety of subjects such as access to courts, gag orders, confidential sources, libel, and copyright.

Student Press Law Center

http://www.splc.org

The Reporters Committee for Freedom of the Press in Arlington, Virginia, sponsors this site to provide legal help and information to student media and journalism educators.

University of Missouri FOI Center

http://www.missouri.edu/~foiwww/laws.html

The School of Journalism of the University of Missouri at Columbia sponsors this site, which provides information about federal and state freedom of information resources and guides.

First Amendment Glossary

Update on Law-Related Education, 22.1, 1998, p. 62. © 1998 American Bar Association.

A

amendment—a revision or change in the law

article—a particular section of the Constitution

authority—the power to enforce rules and laws

B

ballot—a list of candidates and issues to vote for and against in an election

beliefs—certain ideas that people trust are true

bill—a proposed law

Bill of Rights—the first ten amendments to the Constitution

C

candidate—a person running for public office

citizen—a native or naturalized person having the rights and responsibilities of a given country

Constitution—the basic law of the United States, consisting of the Preamble, seven articles, and 27 amendments

D

democracy—government through the people, either directly or through elected representatives

E

election—the selection of an official by vote

equality—the condition of everyone having the same rights and responsibilities

F

First Amendment—the amendment to the Constitution that guarantees freedom of religion, of speech, and of the press, and also protects the right to assemble peacefully and the right to petition the government

freedom—the ability to say what you want, go where you want, and do what you want

G

government—the ruling system of a community, state, or nation

I

issue—a subject being discussed or debated

J

justice—fairness; the idea that everyone deserves to be treated fairly

L

law—a written rule enacted by a legislature

liberty—freedom of action, belief, or expression

P

petition—to make a formal request to the government

preamble—the introduction to a formal document that explains its purpose

R

ratification—approval, as in approval of an amendment to the Constitution

republic—a country governed by its citizens, usually through representatives whom they elect; usually headed by a president

responsibility—a moral, social, and often legal accountability

right—a legal claim

S

separation of church and state—the situation in which the government may not favor any religion or establish an official state religion

V

vote—a formal expression of a person's choice made in an election

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http://www.abanet.org/store/order.html
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First Amendment Puzzle

Throughout *Update on Law-Related Education,* you have been introduced to facts and concepts about the First Amendment. Think about those facts and concepts as you complete the puzzle.

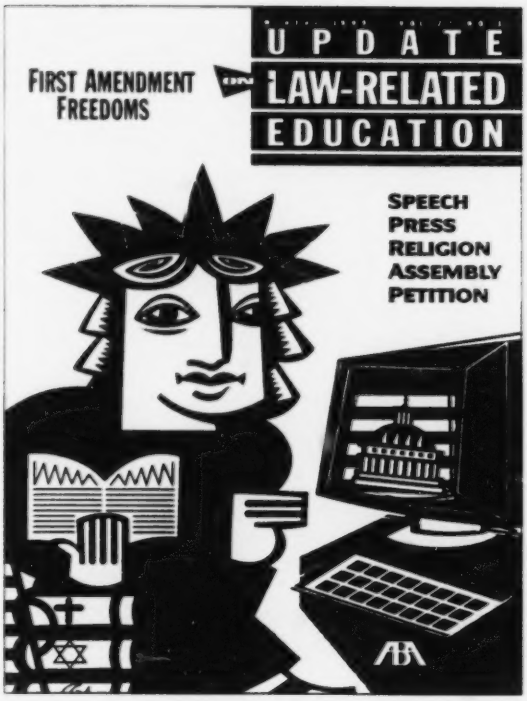
Across

2. The freedoms guaranteed in the First Amendment are all part of freedom of ___.
5. The First Amendment guarantees ___ specific freedoms.
8. The document that establishes the form of government in the United States is the ___.
10. Freedom of ___ is people's right to meet together in groups peacefully.
11. The right to practice any faith or no faith is freedom of ___.
12. The right to speak and write freely is freedom of ___.

Down

1. The ability to do, say, or think as you please is ___.
3. Freedom of ___ is people's right to make a formal request of the government.
4. The first ten amendments of the Constitution are called the ___.
6. A change to the Constitution is an ___.
7. The amendment that protects individuals' freedoms is the ___ of 27 amendments to the Constitution.
9. The right of the media to criticize the government is freedom of the ___.

See page 36 for puzzle answers.



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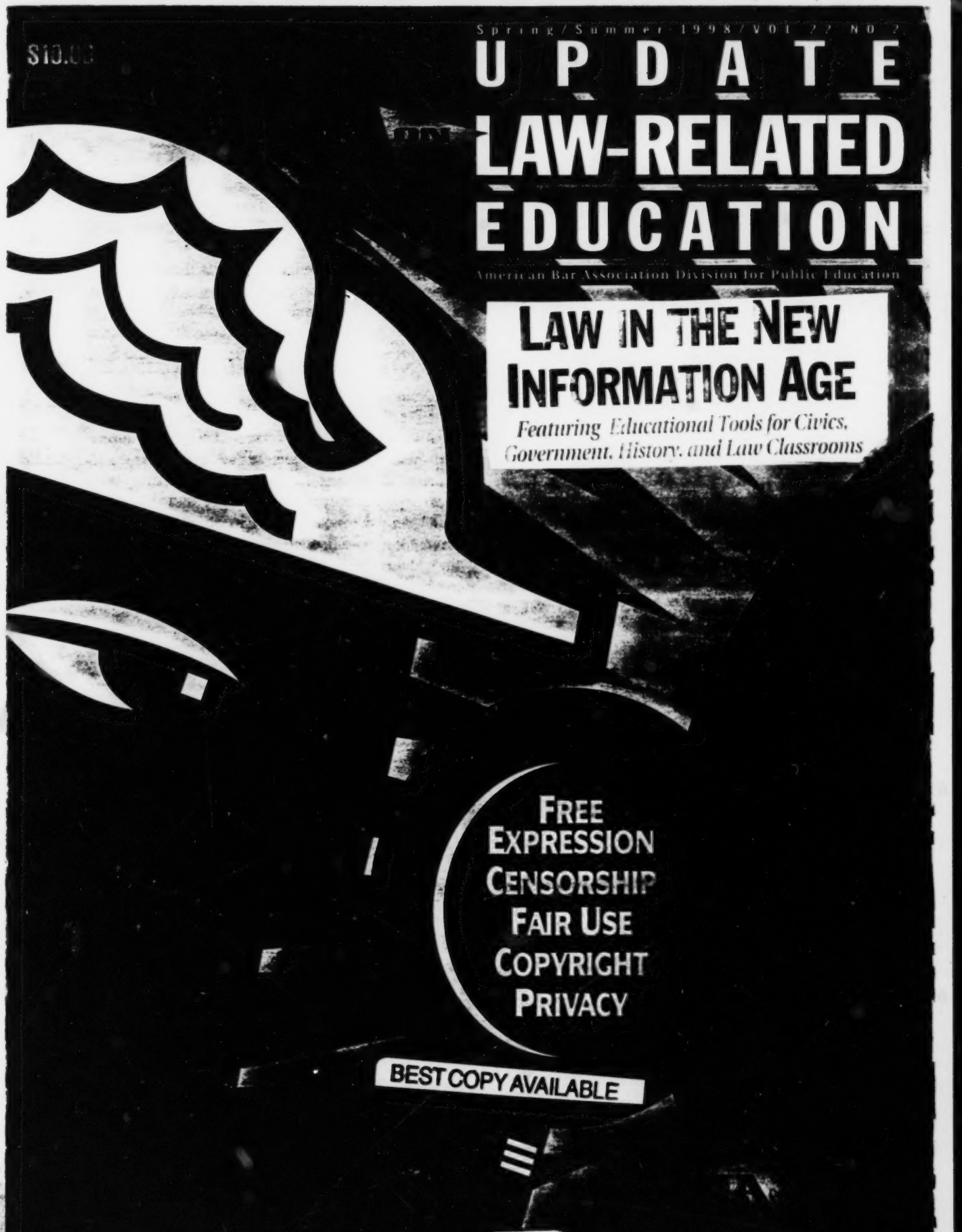

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What's Inside?

This edition presented a variety of new demands that made it unusually challenging and at the same time very satisfying to create. For example, while it's no secret that the law for the New Information Age is only now developing, it may not be as apparent just how difficult making progress is going to be.

As the authors of our feature articles demonstrate, legal experts are still baffled about the Internet as a form of speech and have yet to clarify the most fundamental issues, such as what kind of communication it is and what regulatory categories it might belong in. At this point, perhaps we best understand what Internet speech is not much like, including TV and radio, telephone calls, books and newspapers, and speech making. Thus, the story of the Internet vis à vis the First Amendment is not only still in its first chapter, but in its first paragraph, and likely to remain there for quite a while.

At the same time, this edition enabled our instructional writers to assist a teaching community that is in some ways equally confounded by the Internet and, specifically, the World Wide Web, as an educational medium—one for which the classroom needs responsible, consistent, and immediate support. In fact, for the first time in *Update*'s existence of over two decades, this edition's subject is actually itself a medium of instruction, and the strategies presented do as much to help teachers and students master the research skills demanded for its effective use, as the legal concepts it can bring into their schools and homes. Therefore, look to this edition not only for law-related information to support curricular areas, but also for assistance in making the best use of this marvelous, albeit problematic, learning innovation, including how to identify good Web sites for specific topics and how to create a school site along guidelines that will both protect the new electronic property and keep it from running afoul of developing copyright law.

Finally, the editorial team was quick to realize that if its efforts succeeded, this edition would be a unique and unusually useful educational tool, and so it demanded the most careful editorial scrutiny. For example, in an admittedly confused atmosphere of legal considerations, what would be the enduring and, hence, most productive law-related issues to address? In an arena of quickly proliferating Web sites of immensely varying quality and reliability, which were the most useful, dependable, and appropriate for high-school classrooms, and what precautions should teachers be aware of in asking students to go on line?

With these considerations in mind, we invite you to join Mercury, the Roman god of communications, and the *Update* editorial team as we examine the World Wide Web through our legal lens.

Seva Johnson

Seva Johnson
Director, Publishing and Marketing
ABA Division for Public Education

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Update helps secondary teachers of civics, government, history, and law, as well as law-related education program developers, to educate students about the law and legal issues. The views expressed in this document are those of the authors and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association, the Fund for Justice and Education, or the Standing Committee on Public Education.

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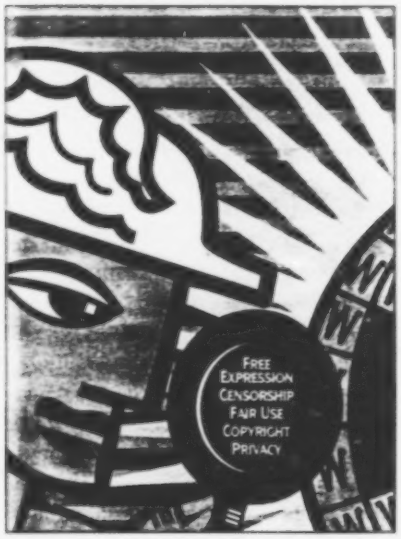

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Technology, Free Expression, and the Law

Should the Internet be regulated in the same manner as the broadcast media?

Jonathan Weinberg

Update on Law-Related Education, 22.2, 1998, pp. 4–7. © 1998 American Bar Association.

In theory, we have only one First Amendment. It commands that government should "make no law . . . abridging the freedom of speech," and it applies to every medium of expression. In practice, things aren't that straightforward. For one thing, courts have made it clear that government can enact a lot of different forms of speech regulation that don't violate the First Amendment. It doesn't violate the First Amendment for government to ban sound trucks that broadcast above a certain decibel level. It doesn't violate the First Amendment for government to ban obscene or harassing telephone calls. It doesn't violate the First Amendment for government to require that every broadcaster get a license from the Federal Communications Commission (FCC).

Government rules regulating speech tend to focus on particular speech media—broadcasting, print, cable television, telephony. (Consider the three examples in the previous paragraph.) Moreover, judges' interpretations of the First Amendment, explaining what the Constitution allows the government to do, themselves tend to be specific to particular media. For example, judges read the Constitution to allow greater regulation of television stations than of newspapers. As a result, every time a new speech medium comes along, we see a new explosion of questions about how the law should treat speech that takes place over that medium.

When legal experts first confronted the Internet, their first reaction was to try to figure out what sort of communications medium this was and which regulatory category it fell into. By its nature, though, the Internet confounds the old regulatory categories.

Jonathan Weinberg is an associate professor of law at Wayne State University in Detroit. He recently served as legal scholar-in-residence at the Federal Communications Commission, focusing on Internet-related matters.

See Teaching Strategy for this article on page 37.

What Is the Internet?

The Internet is a global network of computer networks that are linked together via technology that allows one computer to communicate easily with another.

Any person with access to a computer with an Internet address can send a message to any other such person, via *electronic mail* (E-mail). A group of people can set up electronic mail software so that every message sent by a member of the group, on a particular topic, goes to every other member; this method of electronic discussion is known as an Internet *mailing list*. The *Usenet* is a gigantic bulletin board system operated mostly through the Internet; there are more than 15,000 different Usenet *newsgroups*, each devoted to a single topic, such as Peruvian culture, nude sunbathing, molecular physics, and the television show *The X-Files*. *FTP* allows users to set up easily accessible file archives on the Internet. The *World Wide Web* allows users to make documents, pictures, sound files, video clips, and the like easily accessible to the public and to set up quick *hyperlinks* between different resources on different computers so that the reader can jump from one to the next with the click of a mouse.

New Internet technologies are being developed every day. The quality of voice communication over the Internet is getting steadily better so that individuals can talk across wide distances without paying long-distance telephone charges. The quality of video and audio over the Net is increasing; some radio stations now distribute their broadcasts over the Internet as well as over the air, and the day will likely soon come when a consumer can easily download a feature film over the Internet. Companies are eager to develop new ways to buy and sell over the Internet. The variety of ways to use the Internet for communications, entertainment, and commerce is confined only by the limits of imagination.

What Sort of Medium Is This?

We had freedom-of-speech rules long before we had the Internet. Toward the beginning of this century, those rules, for the most part, were directed at print. The sort of question that preoccupied courts back then was whether the government could ban the distribution of printed leaflets or magazines that endorsed communism. (The answer, the Supreme Court explained, was no: Advocacy of communism is protected speech, and government can't ban it just because it thinks communism is a bad idea or poses a national-security threat.) When new media came along, courts grappled with the new technological developments. When movies were introduced, for example, courts had to decide whether the greater visceral impact of motion pictures justified greater government regulation. (The answer was no.) When over-the-air television and radio came along, courts had to decide whether those media presented a special case. (The answer was yes. The Supreme Court explained that, in order to avoid interference, a government agency had to limit the total number of broadcast speakers. Because only a lucky few could be licensed to broadcast, the government could require those few to act as trustees on behalf of the larger excluded community and obligate them to present views, representative of the community, that otherwise would have no broadcasting outlet.)

So when the Internet came along, a great deal of attention was paid to the question of what sort of medium it was. Was the Internet best analogized to print? to broadcasting? to cable television? to telephones? The difficulty is that to some extent, the Internet is all of these things. Any form of communication can be translated into digital form—into a stream of ones and zeros—and carried as packet-switched information over the Internet. The network is indifferent to the nature of the information carried over it; all that is

History of the Net

For a long time after computers were developed, they were solitary objects; one computer could not talk with another. In 1965, researchers used an ordinary telephone line to connect a computer at MIT with another in California, allowing them to share programs and data across a substantial distance. In order to allow computers to communicate effectively, though, computer scientists had to devise an entirely new way, known as packet switching, of transmitting information over phone lines.

A unit of the Department of Defense called the Defense Advanced Research Projects Agency (DARPA) funded research into connecting computers together into networks. With DARPA's support, scientists began to connect computers at various universities into a new network called the ARPANET. Data was transmitted over the ARPANET at a rate of 50,000 bits per second—a blinding speed at the time, but less than an ordinary user can achieve today with a decent telephone line and an off-the-shelf modem. To make use of the new technology, researchers in 1972 developed the first E-mail program. This, for the first time, enabled the use of computers for long-distance people-to-people communication.

Computer networks began springing up wherever researchers could find someone to pay for them. The Department of Energy set up two networks; NASA set up another; the National Science Foundation (NSF—a U.S. government agency that funds basic scientific research) provided seed money for yet another. In each case, far-flung researchers were able to use the network to communicate and share their work via electronic mail.

Scientists then began to wonder: Would it be possible to connect all of these networks together? They developed technology, called TCP/IP, to do just that. The technique of linking different networks together was referred to as internetworking or internetting; the resulting "network of networks" was the Internet. By the mid-1980s, though, the Internet was still tiny.

The National Science Foundation saw the chance to change that. The NSF funded a high-speed "backbone" to link networks serving thousands of research and educational institutions around the United States. At the same time, scientists were developing new things to do over an Internet connection. European computer scientists developed the World Wide Web, through which users can link documents, programs, or video clips residing on different machines almost anywhere in the world.

Today the Internet connects millions of computers worldwide. The United States government's role in the Internet has essentially disappeared. The ARPANET was phased out in 1990; the NSF backbone was transferred to private industry a few years after that. Private companies built newer and faster backbones; today almost all Internet traffic passes through privately owned computers and transmission lines.

What is the next chapter in the history of the Internet? It may be that the Internet will merge with conventional communications networks so that there will no longer be a clear distinction between making an old-fashioned telephone call and transmitting the same voice communication over an Internet connection. Some people believe that the Internet will become a great medium for electronic buying and selling. Other analysts focus on its potential for conveying information and entertainment; still others focus on its ability to connect people in virtual communities. Nobody knows for sure, though, what the next "killer application" will be.

The 1920s and 1990s

When radio first became popular in the 1920s, expression using the new medium blossomed. There was no federal agency with authority to regulate broadcasting: There were no commercial broadcasters; nobody had really figured out how to make money with radio. Instead, any hobbyist could simply set up a radio transmitter and begin broadcasting for the sheer joy of it; many did. Some radio stations were operated by nonprofit organizations, including religious groups, civic organizations, labor unions, and colleges and universities, that saw broadcasting as a way to educate the public or to effect social change. Other radio stations were operated by companies, such as newspapers, department stores, and automobile dealerships, that saw broadcasting as a way to generate favorable publicity for their main business. Almost no stations sold commercial advertising.

As more and more people started broadcasting, though, interference increasingly became a problem. Hundreds of new stations came on the air each year, and many did not respect the frequencies being used by others. Congress passed the Radio Act of 1927, which made it illegal to broadcast without a license from a new government agency known as the Federal Radio Commission (FRC). The FRC moved quickly to reduce the number of broadcasters. It favored for-profit commercial stations and those affiliated with the two major networks. It was unsympathetic to the needs of nonprofit broadcasters. By 1935, most of the radio stations with powerful transmitters on the air were affiliated with CBS or NBC. Nonprofit broadcasting accounted for only 2 percent of total broadcast time.

As with radio, the first great flowering of creativity on the Internet has come from ordinary people making material available via mailing lists or newsgroups or on the Web. Established media players such as the major television networks, though, are now trying to get in on the act. Will quirky, individualized, not-for-profit content disappear from the Web as it did in radio? It doesn't look that way. What brought about the shift in radio content, more than anything else, was government licensing. Congress made the judgment that the broadcast spectrum was a scarce resource; to avoid interference, only a limited number of speakers could be allowed on the air, and those had to be licensed by the government. But there is no comparable "scarcity" on the Net. No one is proposing (and the courts would not accept) a government licensing requirement for Web speakers. Further, because Internet communication is so cheap, private speakers can make their voices heard without any need to make a profit from their speech.

sorted out by the computers plugged into the edges of the system. The network carries video, voice, and text on the same terms. It has the potential to make hash of a legal system that—until now—sorted video into one regulatory box, voice into a second, and print into a third.

In *Reno v. ACLU*, 117 S. Ct. 2329 (1997), the Supreme Court rejected the argument that the justifications for intrusive regulation of broadcasting apply to the Internet. There was no basis, the Court concluded, for limiting the First Amendment protections available to speakers in the "vast democratic fora" of the Net. (Id. at 2343)

Cheap Speech

As the Supreme Court noted in *Reno v. ACLU*, one of the most striking features of the Internet is the opportunity it offers individuals to speak to a mass audience at little cost. An ordinary person can set up a Web site that is visited by many, or can disseminate an influential newsletter via E-mail. Some ordinary people today reach tens of thousands of regular readers on the Net at almost no cost. The Internet thus has put the lie to A. J. Liebling's sardonic observation that "freedom of the press is guaranteed to all those who own one." By virtue of Internet technology, any person with a telephone line, an attractive message, and a knack for marketing can reach a substantial audience.

The cheapness of Internet communication holds new possibilities for the Net as a democratic forum where regular people can communicate in new ways. It also has led to a problem with awkward legal ramifications: spam. *Spam* is unsolicited commercial E-mail, such as advertisements for pornography and get-rich schemes, which appear unsolicited in the recipient's mailbox. (The term's origins are unclear, but it probably derives from the "Monty Python" skit in which a group of Vikings drowns out all conversation in a cafe by singing "Spam, spam, spam, spam, ...") It can be hugely annoying to open up one's electronic mailbox to find it clogged not with messages from friends and colleagues but with advertisements.

Spam is possible because of the economics of electronic mail. If you are mailing advertisements through the U.S. Postal Service, it costs substantially more to send 100,000 than it does to send 100. For each advertisement you send out, you must pay for the paper, the printing, and the postage. As a result, you will likely try to "target" your advertisement; that is, to send it only to people who are more likely to respond favorably. If you are sending out advertisements by electronic mail by contrast, it costs no more to send 100,000 than to send 100. Clogging the mailboxes of total

strangers with unwanted ads, thus, looks like a cost-effective way to advertise.

There are now bills pending in Congress to regulate Internet spam. The bills pose difficult constitutional and policy questions: Would it be legal simply to prohibit spam? How would the statute have to define *spam* in order to avoid encroaching on political speech? What if spammers were simply directed to place recipients on a "remove" list on request and not to send them mail again? These questions and others still need to be resolved.

Content Regulation

Internet content is "as diverse as human thought." (*Reno v. ACLU*, 117 S.Ct. at 2335, quoting 929 F.Supp. 824, 842 (E.D. Pa. 1996).) Anything that can be written or captured in a picture can likely be found on the Internet. Some of that material is of concern to legislators and government policy makers. For example, Congress in 1996 enacted the Communications Decency Act (CDA), banning the display of "indecent" material on the Net (except in contexts where minors could not get access to it, e.g., Web sites limiting access to persons with an "adult identification code"). The Act indicated that material would be considered indecent if it showed or described sexual or excretory activities or organs in a "patently offensive" way. The Supreme Court struck down the statute as unconstitutional; later articles in this issue of *Update* discuss that controversy.

Sexually explicit speech, though, is not the only controversial speech transmitted over the Internet. Some governments object to speech with certain political content: In Germany, for example, it is illegal to disseminate neo-Nazi speech over the Internet. In Singapore (and many other countries), it is illegal to post speech on the Internet criticizing the government. In a variety of countries (including this one), controversies have arisen over Internet speech that was said to be defamatory.

The Internet presents special problems in this regard because of its global nature: speech made available on the World Wide Web is effectively available everywhere in the world. This makes it hard to tell what country's law governs Internet activity or where a speaker can be sued. If I say derogatory things about you on my Web site, can you sue me in England, where the laws are more favorable to libel plaintiffs? Which country's law applies—that of England or the United States? If I sell computer software over the Internet for a purchaser to download electronically, am I subject to the consumer protection and contract laws of every country on the globe with an Internet connection? These questions of *jurisdiction* over Internet-based transactions and speech come up in areas of law from banking to criminal law to information privacy.

Intellectual Property

Other controversies have arisen over *intellectual property*—copyrights and trademarks—on the Net. Copyright law, in large part, governs the circumstances in which it is permissible to make "copies" of somebody else's work of authorship. When you surf the Web and look at a picture on a distant Web site, are you making a "copy" of that picture, implicating the copyright law? Some lawyers say yes. In order for you to see the picture, they argue, a copy of the picture must be made in your computer's random access memory. Others say no. That fleeting image, they explain, is not the sort of copy that triggers legal obligations.

The Internet has created new sorts of trademark problems. How should trademark law work in connection with the domain names that identify computers connected to the Internet? In general, different companies can have the same trademarks as long as consumers won't be confused—you can buy both Dell books and Dell computers. But only one of them can have the <dell.com> domain name.

Choke Points

In law enforcement terms, the Internet is radically different from mass media such as broadcasting. Those media boast a relatively small number of speakers. Governments or private litigants can seek to enforce legal rules simply by monitoring speakers and taking legal action against them if they fail to comply. The Internet, on the other hand, boasts millions of speakers. It doesn't seem feasible to monitor each and every one of them and sue or prosecute them if they step out of line. Some people have theorized, therefore, that legal controls over speech will mean less in the Internet context.

On the other hand, there are different ways to enforce legal rules. For example, rather than filing individual lawsuits against speakers they believe to be infringing their copyrights, copyright holders instead will commonly send a letter to the speaker's Internet service provider (ISP). The Internet service provider will likely delete the offending material from its computers just to avoid legal hassles. The ISP thus becomes a "choke point" through which legal rules can be enforced against its subscribers.

Congress has stated that an Internet service provider cannot be held responsible when a subscriber posts material that is said to be defamatory. It would impose a terrific burden on speech if ISPs felt obliged to censor their subscribers' postings in order to avoid being sued for defamation. Congress is now considering legislation addressing the role of the Internet service provider when a subscriber is said to be violating copyright laws. It is decisions like these, perhaps more than anything else, that will govern the effective scope of legal rules governing Internet speech. ♦

Regulating Internet Indecency

Is a law limiting access to Internet sites constitutionally possible?

Kevin W. Saunders

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Sex on the Internet

From the concern that has been expressed, it would seem that the Internet is filled with sexually explicit material. In reality, while the Net does contain some sexually explicit material, that matter constitutes only a small portion of Internet content. For the World Wide Web, less than one-tenth of one percent of Web sites are indecent. Despite this small proportion, sexually explicit material is easy to search out and even possible to stumble upon. Some publishers seem to intend such accidental exposure. Some pornographic sites have addresses identical, except, for example, for the suffix, to sites that even an elementary school student might try to access for a school paper. The child who uses the wrong suffixes is in for a surprise. In other cases, the inclusion of young children among those gaining access may be unintentional. Nonetheless, Web searches using the names of movies popular with young children turn up sexually explicit sites.

Concerns over children searching out or stumbling onto indecent material have led to the development of screening software. The software works in several ways. It may contain a list of sites containing pornographic material and block access to those sites. There are, however, so many sites and such regular changes in the content of some sites that keeping an accurate list of objectionable sites is at least difficult. The approach's inadequacy is seen in the fact that the searches using children's movie titles have turned up Web links to sexually explicit sites, even with screening software running. The software can also block all Web sites with addresses containing character strings common to pornographic sites, but this approach still allows access to pornographic sites not using such labels.

Software can also screen for sexually suggestive words or phrases, but this approach may block too little or too much. A program might block sites containing the word *breast*, but that would include sites discussing breast cancer. Even for more sexually suggestive terms, few do not also have nonsexual uses. Screening based on possible sexual words might then bar access to important information. On the other hand, the software may not block enough. It can screen only for text, so pictures remain unblocked.

Communications Decency Act

The United States Congress' concern over potential exposure of children to Internet indecency led to the passage of the Communications Decency Act of 1996 (CDA). The CDA made it a crime to transmit obscene or indecent communications to a recipient known by the sender to be a minor. The CDA also made it a crime to use an interactive computer service to send or display in a manner available to a person under age 18 any communication that "depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs."

Internet publishers were allowed a defense. They would not be liable if they took "good faith, reasonable, and appropriate actions" to prevent minors from receiving the communication by using any methods possible under current technology or if they required using a verified credit card or adult access code or personal identification number.

The CDA was quickly challenged in court. The President signed the CDA on February 8, 1996, and on that very day, the American Civil Liberties Union (ACLU) went to federal court seeking an injunction against enforcing the CDA, claiming that it was a violation of the First Amendment. A

Information in this article is used in the Teaching Strategies on pages 37 and 41.

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similar action was filed in another federal court by Joe Shea, the publisher of an electronic newspaper. Both district courts found the CDA to be barred by the First Amendment's protections for free expression. The government then appealed to the United States Supreme Court.

The Supreme Court, in a case titled *Reno v. ACLU*, had little difficulty agreeing, in a relatively short opinion, that the CDA was unconstitutional. The Court expressed concern that the statute was not clear as to what was prohibited. One part addressed material that is "indecent" while another section addressed material that depicts or describes sexual or excretory activities or organs in a way that is "patently offensive as measured by contemporary community standards." The statute's lack of definition for either the term or the phrase, combined with the different language used in the two sections, was seen as making people uncertain what the standards mean. Vagueness in criminal regulation of content is unacceptable because of what is known as the "chilling effect," inhibitions on communicating protected material out of concern that it may be held to be obscene or unprotected for some other reason.

Vagueness was also not the only concern. The Court found that the CDA would lead to the suppression of a great deal of speech that adults have the constitutional right to send to and receive from other adults. That sort of effect is unacceptable, despite the government interest in protecting children from harmful material, if there are less restrictive alternatives. Even the prohibition on sending indecent material to a recipient known to be a minor would have an unacceptable effect. If one member of a chat room was known to be a minor, the conversation of all the adult participants would be limited.

The Court was also troubled by the possibility that the content of the Internet would become limited to that acceptable in the least tolerant community. An Internet publisher is not the same as a print publisher or movie producer, who can choose to limit the areas in which a magazine or movie is distributed or shown. The Internet is available to all, and the possibility of prosecution in a less tolerant town would limit the material available to everyone, even to those in places that are more tolerant. The Court also saw as a problem the possible application of the CDA to parents who might send material to their own children that other members of the community would consider inappropriate.

The Court also said that the defenses the statute provided were inadequate to save the CDA. The technology spoken of simply does not currently exist. While credit cards are a possibility and are required by some Web

Indecency and Other Media

The Internet is not the first medium to raise the issue of sexually indecent material, material that is pornographic but not sufficiently offensive or explicit so as to be obscene. With regard to print material, *Ginsberg v. New York*, 390 U.S. 629 (1968), held that the distribution of a magazine containing provocatively posed nudes to minors could be prosecuted, even though such photos would not be obscene if distributed to adults. It is also clear, however, that attempts to limit access by minors must not limit adult access.

The difficulty with electronic media is that it is put out there for anyone to receive. The broadcaster or Web page publisher does not have the opportunity to determine whether or not each individual receiver is a minor or an adult. The issue of what effect such a broad and undifferentiated audience should have arose for the broadcast media in *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726 (1978).

In *Pacifica*, the Supreme Court recognized society's interest in protecting children from exposure to indecent material in broadcast programming. The Court held that it was constitutional for the FCC to restrict the broadcast of indecent material to hours when children would be less likely to be in the audience. The channeling of such material into late-night hours was the subject of several lower court cases, resulting in rules limiting indecent broadcasts to between 10:00 P.M. and 6:00 A.M.

Another important case involved a complete ban on telephone "dial-a-porn" services. The ban was declared unconstitutional in *Sable Communications v. Federal Communications Commission*, 492 U.S. 115 (1989). The Court concluded that a ban on indecent, but not obscene, material could not be justified. The exposure of children was limited by the fact that the services charged a fee. Furthermore, a total ban would unconstitutionally limit adult access.

Much of the discussion of the constitutionality of the Communications Decency Act, prior to the decision being issued by the Supreme Court, was, not surprisingly, phrased in terms of whether the Internet is more like the broadcast media or more like a telephone. It is, of course, similar in some ways to each and differs from each in other ways. It is clear from the earlier cases, and from the Communications Decency Act case itself, that each new medium must be examined to determine whether and how children can be protected, without unconstitutionally limiting adult communication.

publishers, the verification of credit-card numbers is an expense that would prevent marginally profitable or non-commercial publishers from making indecent material available.

Current Attempts at Regulation

Despite this initial setback, Congress is not willing to give up on its efforts to protect children from the pornographic material that exists on the Internet. Senator Dan Coats, who with Senator James Exon introduced the original CDA, introduced a bill this year designed to avoid some of the CDA's difficulties. Representative Michael Oxley introduced a similarly worded bill in the House of Representatives. The bills attempt to eliminate the vagueness concerns and also limit the application of the bill to commercial entities on the Web. Chat rooms, bulletin boards, and ordinary E-mail would be unaffected. Specifically, the bills prohibit commercial distribution of material that is harmful to minors to persons under 17 years old. They define "material that is harmful to minors" as material that

i. taken as a whole and with respect to minors appeals to a prurient [that is, shameful] interest in nudity, sex, or excretion;
ii. depicts, describes, or represents, in a patently offensive way with respect to what is suitable to minors, an actual or simulated sexual act or contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
iii. [in the language of the Oxley bill and what will probably become the language of the Senate bill] taken as a whole lacks serious literary, artistic, political, or scientific value for minors.

That definition is similar to one used in a New York statute banning the distribution of such material to minors, and the Supreme Court, in 1968 in *Ginsberg v. New York*, 390 U.S. 629 (1968), found the statute constitutional; so it might, at least with some minor changes, avoid the vagueness problem. There would remain, however, concern about the community by which these standards are to be judged.

There are other problems as well. While the courts have recognized a compelling governmental interest in protecting children from material that is harmful to them, any such attempt must not significantly or unnecessarily limit adult access. In the CDA case, this came down to whether the defenses provided in the statute would really allow the conveyance of indecent material to or among adults. Chat rooms and list servs presented problems for the CDA, since if one participant was known to be a minor, everyone was limited in the material he or she could communicate. Senator Coats' bill avoids that problem by its limitation to the Web and to commercial publishers. There may, however, still be problems with that limitation. The bill does not define "commercial distribution," and, while some Web publishers may be clearly commercial, others may find their status unclear. Representative Oxley's bill does add some specificity by defining those engaged in the Web business as devoting time or labor "as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that [the activities] be the person's sole or principal business or source of income." Even with this addition, the vagueness issue will certainly be raised.

Even for commercial publishers, the defense granted by the bill may not be adequate to quiet First Amendment concerns. The Web publisher has a defense if it requires the use of a "verified credit card, debit card, adult access code, or adult personal identification number or in accordance with other procedures as the Commission may prescribe." One of the lower courts in the CDA case expressed concern over that statute's credit-card defense. The court argued that not all commercial publishers could absorb the costs of requiring and verifying credit cards. The Oxley bill's inclusion of those not in fact earning a profit among commercial publishers would certainly keep this concern alive.

Even the requirement of adult access codes or identifications may present problems. In the context of cable television regulation, the Supreme Court expressed concern over a requirement that cable viewers who wish to access indecent material request unblocking of the cable signal in writing. The concern was that potential viewers would be chilled by the possibility of exposure of the fact that they had requested such access. Here, too, some adults might be chilled in obtaining access to indecent, but protected, material.

An alternative route to protecting children was offered in a Senate bill introduced by Commerce Committee chair Senator John McCain, joined by the ranking minority member of the committee, Senator Ernest Hollings, and Senators Coats and Murray. Senator McCain's bill requires all schools and libraries receiving federal funds for Internet access to install filtering or blocking software to prevent access by children to material deemed inappropriate for minors. The determination of what is appropriate for minors is to be made locally without federal direction or review. Libraries need not install filtering software on all their computers but must make one such computer available to minors.

It is clear that the federal government may attach conditions to the receipt of federal funds. The conditions must be related to the purpose of the funds, and here both concern making the valuable aspects of the Internet widely available. The conditions must also, however, not themselves be constitutionally barred. The McCain bill raises fewer problems than the Coats and Oxley bills, but it is likely to be

challenged. The community standards to be used are clearly those of the locality. There is little or no chilling effect on publishers. There is also a much smaller effect on adult access than was present in the other bills. Adults might be affected if a library had only one Internet access computer and its required filtering software could not easily be turned off for adult use. This limited effect on adults not being able to use others' equipment to access blocked material might be justified, if the requirement is necessary to, and does, protect children.

The difficulty here is that which was already discussed in considering the CDA. The filtering programs do not filter out enough harmful material. They also may filter out too much valuable material. As the ACLU has pointed out, a teacher could not assign Internet research on female genital mutilation or abortion rights since blocking software typically bars access to sites with information on these topics. An approach that fails to protect minors, while blocking constitutionally protected material from child or adult access, may be of questionable constitutionality.

Can the Internet Be Regulated?

Despite the concerns expressed over the constitutionality of the approaches offered, there may still be ways to protect children from the effects of exposure to indecent material. The Supreme Court, in *Roth v. United States*, 354 U.S. 476 (1957), recognized that obscene material is not protected by the First Amendment. *Miller v. California*, 413 U.S. 15 (1973), provided the Court's definition of obscenity as asking

i. whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest;
ii. whether the work depicts or describes in a patently offensive way sexual conduct specifically defined by the applicable state law; and
iii. whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Furthermore, the *Ginsberg* case on which the Coats bill is based recognized that material may be obscene for minors, if distributed to minors, even though it would not be obscene when distributed to adults. That is, when distributed to a minor, the material is judged for its prurience, offensiveness, and value based on what is acceptable for minors. Any limitations on the distribution to minors must not, however, infringe on adult rights to obtain such material.

I have suggested a requirement that all software used to post to or publish on the Internet provide senders or publishers an option to make their material available to all or to adults only. Receiving software would be required to have an option to be set by parents to receive only material indicated as suitable for all. Each Web publisher or other Internet mailer or poster would rate his or her own material as to its suitability for minors, with the page or message containing a signal indicating suitability or nonsuitability for minors. Parents could then use software to screen out material that is rated as unsuitable. Publishers or senders would be liable only if they fail to attach a signal to material that is determined to be obscene as to minors. I also suggest rules regarding links that strongly limit any liability for material found on those pages.

Adults are free to communicate indecent material to each other and may receive such material without providing identification. The only chilling effect is the potential decision to make material unavailable to minors that may not be obscene for minors, but even then, minors whose parents consider them mature enough to view such material would have access.

Even this approach has at least one potential weakness, and it is a weakness that all regulatory attempts will face. Universal access to the Internet makes the community standards against which prurient interest and offensiveness are judged a problem. While the community might be defined as the Internet community, any trial will take place in a real community, and the standards of the least tolerant may govern. This is a potential problem for all Internet regulation. It is, however, possible that the Court will decide that community standards as to what is appropriate for minors is not as different from community to community as it is for adults. If society is to be allowed to provide children any protection from Internet indecency, some such concession will be required. ♦

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Who Am I?

They are the pickpockets of cyberspace. With a computer, your name, and Social Security number, they can buy cars with your credit cards and transfer money out of your accounts. And who do the authorities come looking for when payment is due? With $117 billion in financial transactions estimated to occur on line by the year 2000, it may just be the crime of the millennium. One device cyberpolice have cooked up to protect your privacy: biometric IDs—the computer scans your eye or fingerprint to determine if you are who you say you are.

Adapted from ABA Experience, *Spring 1998, p. 25.*

Should the Internet Be Censored?

NO! NO! NO! NO!

Loren Siegel

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An interesting news item recently appeared in the national press. It seems the American Family Association's (AFA) Web site is being blocked by CyberPatrol, a popular brand of blocking software used by some public libraries and schools. The AFA is a very conservative religious organization and, ironically, a strong supporter of government restrictions on the Internet. According to their own Web site, the AFA "stands for traditional family values, focusing primarily on the influence of television and other media—including pornography—on our society."

So why would CyberPatrol—one of the most popular blocking software programs on the market—decide to block that organization's Web site from view? There's nothing violent, illegal, or pornographic on the AFA's Web site. Far from it!

It turns out the AFA's Web site was placed on CyberPatrol's "Cybernot" list because it expressed "intolerance," which is defined as "pictures or text advocating prejudice or discrimination . . . ." Since the AFA is opposed to homosexuality on religious grounds, its Web site was deemed to be "intolerant." Many people and organizations, including the ACLU, strongly disagree with the AFA's position on homosexuality, but we would never suggest that they do not have the right to express their opinions through the written or spoken word. That would be totally inconsistent with freedom of expression, which is the very backbone of America's constitutional democracy.

That, of course, is the problem with censorship. People tend to like it when it is used to censor things they don't like. But censorship is like poison gas: when the political winds shift, it blows right back in the opposite direction.

Making the use of blocking software by public libraries and schools mandatory is the government's latest attempt to regulate and restrict the Internet. Its first attempt, the 1996 Communications Decency Act, made it a crime to publish "indecent" communications on line. That law was declared unconstitutional by the U.S. Supreme Court in *Reno v. ACLU*. In a 7–2 decision, the nine justices ruled that the Internet was a free speech zone that deserved the same First Amendment protection as books, news-papers, and magazines. Even "indecent" expression, as long as it was not legally obscene, could not be censored or punished.

Now that government (federal, state, and local) cannot practice direct censorship by outlawing certain kinds of expression, it is relying on blocking software instead. An increasing number of city and county library boards have recently forced libraries to install blocking programs, often over the objections of librarians and library patrons. And in March of this year, the Senate Commerce Committee passed the Internet School Filtering Act, which will, if enacted, require all public libraries and schools receiving federal funds for Internet access to use blocking software.

The American Civil Liberties Union, the American Library Association, and many other groups who care about free speech are strongly opposed to laws that require schools and libraries to use blocking software. How does blocking software work? Blocking software can be installed in individual or networked computers. It works together with a Web browser (like Yahoo, Magellan, and Alta Vista) to hide or prevent access to certain Internet sites. Depending on the software company in question (and there are many), blocked categories may include hate speech, criminal activity, sexual speech, "adult" speech, violent speech, religious speech, and even sports and entertainment. Some software companies hire people to browse the Internet looking for sites that should be blocked. Others use automated search tools.

Since whatever is blocked ultimately depends on artificial intelligence, mistakes are made, from the sublime to the ridiculous. In general, the blocking tends to be far too broad, sweeping completely innocent material into the mix

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Should the Internet Be Censored?

YES! YES! YES! YES!

Bruce Taylor

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The government has a difficult job looking after the public health, safety, and welfare. Congress passed the indecency provisions of the Communications Decency Act (CDA) to protect minors from finding or being assaulted by on-line pornography. One of the arguments voiced against the CDA was that the United States didn't need more laws to deal with porn on the Net because parents should just use the developing filter software to protect their children at home. Now the anti-government forces are attacking the filters as too restrictive, and the ACLU and American Library Association oppose installing filter programs on school and library systems, even for children. We cannot allow the adult population to see only what is suitable for children, but we also can't condemn children to seeing what is unsuitable even for adults.

Whether they want it or not, young and old Web surfers get unsolicited E-mail offering porn for sale. If they even peek at a porn site, they'll get smut spam inviting them to come hither to even more sites. The porn syndicates offer free teasers and sell hard-core pictures on thousands of xxx.com Web sites. The Usenet's alt.sex newsgroups provide free bulletin boards for "porn pirates" to trade the most extreme kinds of pornography, what the syndicate wouldn't dare sell in the back-alley porn shops of New York or San Francisco. Unfortunately, these explicit sites are not limited to adults and there is little self-regulation.

In the CDA case, the Supreme Court affirmed that "Transmitting obscenity and child pornography, whether via the Internet or other means, is already illegal under federal law for both adults and juveniles." It is a felony to upload or download obscene materials and to send, receive, or possess child porn, but law enforcement cannot possibly prosecute all the offenders and the law alone does not deter them. The Net has group sex, incest, torture, bestiality, excretory, and child sex images that could be criminally prosecuted in any court under federal and state obscenity and child pornography laws. It is a serious problem; one that I think threatens the Internet's ability to be a universal medium for people of all ages, incomes, and nationalities.

We at the National Law Center for Children and Families (NLC) are proponents of filters as a least restrictive alternative to criminal prosecutions to restrict the traffic in illegal obscenity and child pornography to adults and to restrict the instant availability of harmful pornography to minors. We believe a good filter is a necessity for home computers used by adolescents and young teens. We also believe a selective, non-agenda-based filter should be used on school and library terminals for minors. If existing laws were vigorously and fairly enforced, there would not be the explosion of child porn and hard-core obscenity on line, and no restrictions should be needed for adult terminals. As it is, however, obscenity and child pornography, being illegal even for "consenting" adults, should be restricted by technical filtering methods until and unless law enforcement is successful in curtailing it on the Web and Usenet.

We support filtering Net access to block out pornography that is within the scope of federal and state obscenity laws, meaning hard-core pornography with sexual penetration clearly visible and all explicitly sexual images of children. Since schools, businesses, and libraries have no constitutional right to such unprotected material, it is our opinion that they should use available filter software and server programs to block illegal obscenity and child porn from entering their computer terminals, just as they do by keeping hard-core films and magazines out of their physical collections. (Two NLC legal memos on filter use are available at FilteringFacts.org, a pro-filter librarian group, as well as at NationalLawCenter.org.) Parents can then set their home filters to restrict more if they choose.

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Bruce Taylor is president and chief counsel for the National Law Center for Children and the Family in Fairfax, Virginia.

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of objectionable material. Typical examples of blocked words and letters include *xxx*, which ends up blocking Super Bowl *XXX* sites; *breast*, which blocks Web sites about breast cancer; and the consecutive letters *s*, *e*, and *x*, which block sites containing words like *sexton* and *Mars exploration!*

Blocking software can be a useful tool for parents, and, in fact, that is what the Supreme Court said in *Reno v. ACLU*: "It is a reasonably effective method by which *parents* can prevent their children from accessing material which the parents believe is inappropriate." (Emphasis in original.) But in the hands of the government, blocking software can become an instrument of censorship and repression.

CyberPatrol, for example, is currently installed in a number of public libraries, including libraries in Austin, Texas, and Boston, Massachusetts, on computer terminals used by minors. (If Senator John McCain, R-Ariz., has his way, programs like CyberPatrol will be installed in most school and public libraries in the country. Sen. McCain is sponsoring the Internet School Filtering Act.) Among other categories, CyberPatrol blocks material on the Internet deemed to be "FullNude," defined as "pictures exposing any or all portions of the human genitalia," and "SexActs," defined as "pictures or text exposing anyone or anything involved in explicit sexual acts . . . ." According to a report by The Censorware Project, the following Web sites are completely blocked by CyberPatrol as falling within one or both of those banned categories:

Creature's Comfort Pet Care Service. The Web site of a married couple who walk dogs and provide in-home care for pets while their owners are away. Nothing "FullNude" or "SexActs" was found by The Censorware Project.

The National Academy of Clinical Biochemistry. Not very explicit, unless you consider draft recommendations on the use of cardiac markers in coronary artery disease to be explicit material.

Explore Underwater Magazine Online. Contains a photo art gallery that is not the least bit "FullNude" or "SexActs."

Another blocking software company, Net Shepherd Family Search, claims to have rated 97 percent of the English language sites on the Web. According to a report by the Electronic Privacy Information Center (EPIC), Net Shepherd's filtering mechanism "prevented children from obtaining a great deal of useful and appropriate information that is currently available on the Internet." For example, EPIC found that if you conduct an unblocked search for "American Red Cross" on one search engine, you were referred to almost 40,000 documents. But if you used the same search engine together with Net Shepherd, that number produced only 77 hits. "The search engine filter had blocked access to 99.8 percent of the documents concerning the American Red Cross that would otherwise be available on the Internet." EPIC found similar results when it conducted searches for the Child Welfare League of America, UNICEF, and United Way.

There are lots of things libraries and schools can do to ensure that young people are not exposed to inappropriate material, short of blocking access to a huge portion of what is available on the Internet. One idea is to require students to take a seminar similar to a driver's education course. The seminar would emphasize the dangers of disclosing personal information such as your address, communicating with strangers about personal or intimate matters, and relying on inaccurate Internet resources. Another is to develop "acceptable use policies," as some schools and libraries have already done, instructing parents, teachers, students, librarians, and patrons on the proper use of the Internet.

This fall, a federal court in Virginia will hear the first legal challenge to the use of blocking software in a public library. The ACLU is suing the library board of Loudoun County on behalf of a number of groups and individuals whose Web sites have been blocked from view, including Sergio Arau, a popular Mexican artist and rock singer; Rob Morse, an award-winning columnist for the San Francisco *Examiner;* and John Troyer, creator of "The Safer Sex Page."

The congressional debate over the Internet School Filtering Act will also be gathering steam. Young people have a real stake in the outcome of these events. The evolving law of the Internet will determine whether or not children, in particular, and people, in general, will have an "information superhighway" that is free of arbitrary, overbroad, and narrow-minded government regulation.

You can follow the progress of both the legislation and the Virginia trial on the ACLU's Freedom Network Web site: html://aclu.org/ ♦

Death Row on the Web

Dean Carter has a Web page called "Dead Man Talkin'" Carter is on San Quentin's Death Row in California for murdering five women and raping two others. He sends his columns to Alex Bennett, a radio talk show host, who posts them on the Web. George Cullins, whose daughter was killed by Carter, is so enraged by the murderer's access to the Internet that he has started his own Web page, Citizens for Law and Order Talking. He also launched a campaign urging companies to stop advertising on Bennett's radio program. Meanwhile, California prison officials are considering what limits should be placed on prisoners' free speech.

Adapted from ABA Human Rights, *Spring 1996, p. 20.*

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Today's filtering programs work very well and don't make most of the mistakes attributed to them by "anti-censorware" advocates. They often say that filters block *breast* or *sex* references or other innocent material. The truth is that America Online (AOL) added *breast* to its word-blocking list two years ago, for about a week, until it was discovered that it blocked breast-cancer sites. Anti-filtering activists also accused the X-Stop program of blocking a Quaker site and other links. If it ever did, current editions of X-Stop's "Librarian" and filters such as NetSheperd, N2H2, Net Nanny, and CyberPatrol have corrected such early developmental mistakes. Don't believe everything you hear, check out the facts for yourself.

The net is so potentially promising that universal access should be a goal for both adults and children. We must solve the problem of how to allow minors and students access to the Internet's vast storehouses of information without admitting them to the "adult" bookstores in the dark corners of the Web. These are tough questions with no easy answers, but that's why "censoring" the Internet is today's Great Debate. ♦

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Privacy or Freedom on the Internet

What are the conflicts between proposed new privacy laws and freedom of information?

Solveig Singleton

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New fears about privacy are fueled by alarming news stories about information leaked from electronic databases or over the Internet. In Oregon, someone posted on the Internet a copy of state Department of Motor Vehicles records (available for sale from the state for $222), enabling anyone to match a vehicle license number with the vehicle's registered user. A naval officer named Timothy McVeigh (no relation to the Oklahoma City bomber) was discharged from the Navy when an employee of America Online disclosed McVeigh's identity and homosexual status to a Navy investigator. McVeigh sued the Navy and America Online, won, and will receive an undisclosed sum and retirement from the Navy with full benefits. Many people are now aware that Web sites can use small tag files called "cookies" to surreptitiously collect and keep information such as a visitor's E-mail address.

These alarming stories have led some to call for new laws to protect our privacy. Are such laws needed? Many would say they are. A recent survey reports that the number of people "somewhat concerned" about threats to their privacy grew from 64 percent in 1978 to 82 percent in 1995. Internet users' concerns about what might happen to data collected from them on line may be holding back electronic commerce. Over 70 percent of 9,300 consumers who responded to one on-line survey are more concerned with privacy on the Internet than about information transmitted by phone or mail.

To decide what kinds of privacy protections might be needed in the digital age, we should consider carefully how *privacy* has been defined in the past. It is also important to consider potential conflicts between privacy and freedom.

Solveig Singleton is director of information studies at the Cato Institute in Washington, D.C.

What Is Privacy?

Privacy is not easy to define. One classic definition of *privacy* is the "right to be left alone." But this definition is too sketchy for most purposes. Because many of our actions affect and interest other people, we do not always have a right to be left alone. If we do not pay our bills, we can hardly complain if our creditors begin to send us letters and make phone calls. And while we might find nosy neighbors or persistent salespeople annoying, we would not expect a right to throw them in jail or drag them into a lawsuit. Besides, many of us sometimes enjoy being nosy or annoying ourselves. As much as we value privacy, we value freedom as well. We also value information about those we live and work with.

Information in this article is used in the Teaching Strategy on page 41.

Someone once commented that we want privacy for ourselves but information about others.

Part of the problem with defining *privacy* is that the term is used in so many situations in which we feel that others have intruded upon our lives. These situations can be very different from one another. Some examples include cases in which

a. the police break down a man's door and seize his computer without a warrant;
b. a woman who is HIV positive learns that her doctor has told one of her neighbors about her medical problems;
c. a student learns that her classmates are discussing her behavior at a recent party;
d. a Web site you used to order pet supplies sells its list of customers to a humane society, which sends you a letter asking for a donation.

Some of these invasions of privacy are perfectly legal; others are not. But they are very different from one another, and it would be difficult to come up with a definition of *privacy* that describes all of them. Looking at each case, however, helps us describe different kinds of privacy problems.

Privacy and Property Boundaries

In Example a, the police have violated the Fourth Amendment of the United States Constitution. The Fourth Amendment requires the police to get a warrant to search our "persons, houses, papers, and effects" (courts allow them to conduct a search without a warrant in emergency situations). This amendment is the foundation of U.S. citizens' rights to privacy against the government, but the amendment does not even mention the word *privacy*. The privacy rights protected by the Fourth Amendment are defined by ordinary property rights: our right to control our own bodies, houses, papers, and other belongings. Ordinary property rights, like the fence around your house, help us define many privacy violations. Someone who glances in your window as he walks by on the street probably hasn't violated any law, but a Peeping Tom who crosses your lawn to peer in has.

New technology makes ordinary property rights less useful in defining privacy. Suppose the police use infrared film to see what is happening in your house without actually entering your property? Or a neighbor standing on his own property aims a digital camera in your window? Here courts have said that a privacy violation occurs when our reasonable expectations of privacy are violated. The problem is, this definition is circular. If a court rules that the police may use infrared film without a warrant, then you will not expect activities in your house that generate heat to be private. If the court rules the other way, then you can expect privacy. Perhaps this is why lawyers say that "hard cases make bad law."

Problems with security—protecting property—are probably the most important category of privacy problems holding back Internet commerce. Many people are reluctant to use their credit card numbers to buy goods and services on line, fearing that card numbers will be intercepted by hackers.

Credit-card fraud, of course, is already illegal. The best way to improve Internet security in this area is not to pass new laws but to use better technology to protect against hackers. Strong encryption technology, for example, allows us to use powerful mathematical algorithms to encode E-mail and other messages so that only the intended recipients can read the message.

New laws were required, however, to protect Internet privacy against unwarranted (no pun intended) intrusions by overzealous law enforcement officers. The Electronic Communications Privacy Act of 1986 was passed to require police to obtain a warrant before reading our E-mail.

Privacy, Contract, and a Special Case: Medical Privacy

Some privacy rights grow out of special relationships. For example, lawyers are expected not to discuss clients' cases with outsiders. Indeed, an expectation of confidentiality can be formed by any contract.

A contract is a legally enforceable agreement between two people to exchange goods or services. Contracts are an important kind of law, just like the statutes enacted by Congress, even though no congressional representatives vote to approve contracts. A contract need not be a written document. A contract can be formed without any words being spoken if both parties understand what they are expected to do.

Thus, privacy rights can be created whenever someone makes a legally enforceable promise to keep certain information secret (though not all promises are legally enforceable). The America Online employee who told the Navy investigator about Timothy McVeigh's on-line identity, for example, violated the privacy terms of America Online's agreement with its subscribers.

Example b, the gossipy doctor, provides another good example of a violation of privacy rights created by custom and agreement. Here the privacy rights are defined by the terms of a patient's relationship with her doctor. Confidentiality has always been an important aspect of a doctor's relationship with his or her patient. Physicians in ancient Greece promised to "all the gods and goddesses" to protect the privacy of medical information according to the Oath of Hippocrates:

> Whatever, in connection with my professional service, or not in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret.

The American Medical Association (AMA) has updated the oath to say "that whatsoever you shall see or hear of the lives of men or women which is not fitting to be spoken, you will keep inviolably secret." The concern is that a patient will not honestly describe his or her symptoms to a doctor if the patient fears his or her illness will become fodder for gossips. Well-established custom, then, leads patients to expect that doctors will keep medical information private. In medical ethics, *privacy* is defined as one's right to give consent before information about oneself is relayed to third parties. Doctors who violate this expectation can expect to be sued and disciplined by the medical board.

Special problems with medical privacy arise because of the role of government and insurance companies in paying for medical care. Medicare fraud costs taxpayers billions of dollars every year. As a reaction to this, there is a great deal of pressure to give Medicare auditors easy access to patients' medical records, even without a warrant.

Gossip and Privacy

The gossiping classmates in Example c did not violate any law, although the subject of their discussions might become very unhappy. We might talk

about gossip as a violation of privacy and frown on gossips, but the courts have no power to enforce one's desire not to be the subject of gossip. If your neighbor is spreading rumors about the time he or she saw a police officer knocking on your door, you probably will not win if you tried to sue him or her. Why do we allow this?

One theory is that gossip is just not very harmful. One early article on privacy was authored by Louis D. Brandeis (later Justice Brandeis of the United States Supreme Court) and Samuel D. Warren in 1890 (Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," 4 *Harvard Law Review* 193 (1890): 195). Brandeis and Warren argued that "as long as gossip was oral . . . [one's] peace and comfort were . . . but slightly affected by it."

But this theory is plainly wrong. Historically, gossip exchanged within some small communities could cause terrible harm indeed, because public commentary within those communities had powerful influence over others' lives. One anthropologist notes that even today in an isolated Spanish village, "people live very close to one another under conditions which make privacy difficult. Every event is regarded as common property and is commented upon endlessly. . . . People are virtuous for fear of what will be said." The reason that we allow gossip, then, cannot be because it has little impact on our lives. Today most people do not live in small, isolated towns, but our schools and workplaces continually expose us to the opinions of others.

A better reason is that we allow gossip because we need and value the free exchange of information. Although gossip is sometimes inaccurate and often irrelevant, it can serve an important social function. Is the new student someone you might want to become friends with or date? Does the new employee drink too much or have some other problem that might make him or her unreliable? Can you trust the new neighbor's son to take care of your children for the afternoon? Although gossip might be inaccurate, it might be better than having no information at all. Human societies tend to gossip about whatever is important to their social and economic development. In Lapland, for example, people gossip about the theft of reindeer. Anthropologists describing other cultures note that "when individuals are dependent on one another for cooperative hunting, farming, or herding or for access to wage labor, gossip and the reputations it creates can have serious economic consequences."

An attempt to outlaw gossip in the name of privacy would conflict directly with the importance we place on the freedom of information. Of the examples of privacy we have examined so far, this is the first conflict between privacy and freedom. Allowing the police to conduct searches only with a warrant does not limit our freedom, it protects it. Expecting a doctor to keep information confidential does not limit his or her freedom, since he or she agreed to respect the patient's privacy to begin with. But outlawing gossip would put a stop to the perfectly ordinary human activity of noticing what someone else is doing and commenting on it.

Privacy Versus Free Speech

The conflict between privacy and freedom of information emerges most clearly in thinking about tabloid newspapers like the *National Enquirer*, which often contain stories based on gossip and rumor. Rumors fuel many stories that circulate in the more respectable mainstream press as well. Any attempt to regulate this would obviously conflict with First Amendment rights of free speech.

When Brandeis and Warren wrote their famous article on privacy, they worried that "the press is overstepping in every direction the obvious bounds of propriety and of decency"—a concern echoed today in the outcry against the "paparazzi" who pursued Princess Diana. Brandeis and Warren argued in favor of the creation of new privacy rights to stop the press from printing scandalous stories. But they failed to consider whether creating new rights to restrict the press would violate principles of free speech. In 1890, this lapse was not surprising, as courts in the late 19th century were hostile to free speech. Today, however, we understand that taking free speech seriously means allowing the freedom of information even when that information is not perfectly accurate or obviously important.

After Brandeis and Warren's article, some judges began to recognize a hodgepodge of tort claims based on privacy. In our legal system, winning a lawsuit based on a tort gives one the right to get money from his or her opponent (so even though O. J. Simpson was found not guilty of murdering Nicole Brown Simpson and Ron Goldman in a criminal case, he lost the tort lawsuit that was brought by Ron Goldman's family and must pay the damages).

The privacy torts recognized in some states include the misappropriation of one's name and likeness for commercial purposes, public disclosure of embarrassing private facts, publicly placing the plaintiff in a false light, and intrusion into the plaintiff's seclusion. It is not especially easy to win such cases. For example, to succeed in a suit for intrusion into the plaintiff's seclusion, one must show an intentional invasion, "physical or otherwise, upon the solitude or seclusion of another or upon his private affairs, or concerns . . . if the intrusion would be highly offensive to a reasonable person." And such suits succeed only if the person has a reasonable expectation of privacy.

Some states have also passed special privacy statutes. These include the "right of publicity" laws, which help sports figures and movie actors ensure

that they alone may profit from the sale of their own images.

Courts have recognized the potential conflict between privacy and free speech in several cases. The Supreme Court has ruled that a newspaper may publish a rape victim's name once it becomes a matter of public record. *Cox Broadcasting v. Cohn*, 420 U.S. 469 (1975). In *Time, Inc. v. Hill*, 385 U.S. 374 (1967), the Court ruled that a magazine cannot be liable for inaccurate portrayal of an individual's private life unless the individual can show that the newspaper knowingly or recklessly printed a falsehood. In *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979), the Court ruled that a state law punishing the truthful publication of the names of juvenile offenders does violate the First Amendment.

In general, however, the privacy torts and laws created in this century are narrowly defined. The usual legal rule is that human beings enjoy the freedom to talk or write about one another in most contexts, as they have always done. And this freedom has been amplified a thousand times by the Internet.

Economic Freedom and Privacy

Perhaps the most controversial aspect of Internet privacy involves businesses' use of computer technology to collect information about their customers, as in Example d. Many Web sites, including some designed for children, collect visitors' names, E-mail addresses, and other information.

Technology allows Web administrators to collect information about visitors without the visitors' even being aware of it. One company in the business of selling advertising on the Internet uses "cookies" to keep track of how many times a Web surfer has seen one of its ads. The cookie is a small computer file stored on your computer when you first view the company's ad. When you have seen the ad three or four times, the company knows that you are probably tired of it and automatically displays a different ad.

The use of such information for marketing purposes seems sinister. But is it really? Most of the companies that collect information about their customers are simply going to use it to sell things. As human motives go, this is not particularly horrible.

Indeed, using information about how consumers behave and what they want could be better for all of us. Businesses waste a tremendous amount of time and money every year trying to sell goods and services to customers who just are not interested. Many Internet sites with useful information and millions of visitors are losing a lot of money because they do not know how to operate their businesses profitably. The companies that run these sites can afford to lose money for a few years as a learning process, but they will not be able to continue losing money forever. These businesses could use electronic libraries of information about customers' preferences to target special sites and advertising only to customers who are most interested. They can use these libraries to develop new products and services, from tall women's clothing to credit cards that offer discounts to frequent buyers of tropical fish supplies or gardening software.

Libraries of customer information can also help increase competition. Imagine that you are starting a small mail-order business selling baby clothes on the Internet. You are competing with large department stores, many of which have long-established relationships with their customers. If you can rent a list of potential customers from other businesses, you will find it much easier to get your business started.

Some have proposed a new rule that would require a company that wanted to transfer information about its customers to another business to get the customers' permission first. Does it make sense, however, to make it illegal for a business to communicate truthful information about a real event to another business unless the company has permission from the customers involved? Such a rule might often mean that information about customers' behavior would become too expensive to collect and too expensive for most businesses to afford.

Technology often helps us protect our privacy without imposing too much red tape on business. New browsers let you know when a Web site is trying to tag you with a cookie. Concerned parents can buy software that prevents their children from giving out their names or addresses on line—or teach them to give out a fake name and address. And parents of young children would be wise to sit down and explain that a lot of information sent over the Internet is misleading or just plain crazy—not just advertising, but many other things as well.

Conclusion

As we think about the need to protect privacy on the Internet, it is important to recognize that new laws have costs as well as benefits. Both ancient and recent history suggests that government, with its unique powers over the police and courts systems, can be a much greater threat to privacy than private businesses. The difficulty of protecting our Fourth Amendment rights against warrantless searches in the context of new electronic technology will perhaps prove to be the most challenging privacy issue of the next century. Preserving freedom in the face of fear of new technology will be another great challenge. ♦

Update on the Courts

The U.S. Supreme Court: 1997

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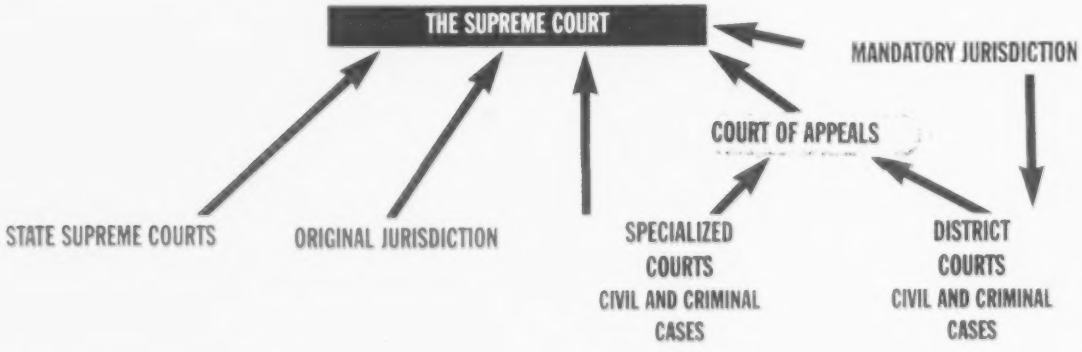
During the 1997 term, the Supreme Court continued to exhibit a tendency toward unanimity. The Court decided without dissent, or separate opinion, 34 of its 94 cases during the year compared to 26 last term and 28 in the 1995 term. Of the 91 signed opinions, Chief Justice William H. Rehnquist wrote 12; Justice Ruth Bader Ginsburg came in second at 11; Justices Stephen G. Breyer, Anthony M. Kennedy, Sandra Day O'Connor, Antonin Scalia, David H. Souter, and Clarence Thomas wrote 10 each; and Justice John Paul Stevens wrote eight.

Unanimous opinions are usually rendered in routine cases. Justice Ginsburg wrote six of these; followed by Breyer with five; Rehnquist, O'Connor, Scalia, Souter, and Thomas with four each; Stevens with two; and Kennedy with one. Five-to-four decisions tend to be much more contentious and ideological in nature. Kennedy, Thomas, and Breyer each wrote three of the majority opinions in 5-4 splits, followed by O'Connor with two, and Rehnquist and Stevens with one apiece.

Great discretion is granted the Supreme Court in managing its caseload. Of the some 7,000 disputes that reached the Court last term, the justices delivered only 91 signed opinions. This is higher than the decade's low of 75 during the 1995 term and about in keeping with the 92 average for the 1990s, but the number is well



The Federal Court System

Federal, as applied to the U.S. system of government, usually refers to the national government of the United States of America. Federal also refers to the American system of more than one level of authority charged with making and carrying out laws. There are also a number of ways to dispute regulations, ordinances, edicts, and statutes; but if a challenge progresses through the system, it invariably ends up in a state or federal court. The final arbiter is the U.S. Supreme Court, which, as the highest court in the land, is empowered to review decisions from both the state and federal systems.

The Supreme Court has original jurisdiction in some cases—for example, those involving the federal government and a state, two or more states, and foreign diplomats. Most federal cases are first brought before the district courts, which are grouped into twelve regions (11 numbered Circuit Courts and the Circuit Court for the District of Columbia) plus the Federal Circuit Court of Appeals. The federal court system also has specialized courts, such as the Tax Court and the Court of Claims. While some cases may be appealed directly to the Supreme Court, the vast majority are initially appealed to the circuit courts.

below the average of 140 signed decisions annually in the 1980s.

Out of 94 oral arguments in the 1997 term, the Court disposed of the underlying cases as follows: 38 were reversed; 35 affirmed; 13 vacated (meaning generally, but not always, that the case is returned to the lower courts for further review); five were dismissed, letting the lower court decision stand; two were classified as "other" (combinations of partially affirmed, reversed, vacated, etc., rulings); and one came up under the Court's original jurisdiction.

Original Jurisdiction

Original jurisdiction is rarely invoked, having been pled only twice during the past four years. It usually involves disagreements between states or between the federal government and a state. The Court theoretically acts as a trial court, resolving both factual and legal issues presented, in original jurisdiction matters. But the Court itself does not actually hold a trial; it delegates that role to a "special master," who renders an opinion that the Court either approves or disapproves, in whole or in part.

During the 1996 term, the Supreme Court took original jurisdiction over a federal-state dispute involving oil and gas rights on submerged lands off the coast of Alaska. The United States won that case because the justices ruled that the federal government retains rights over public lands that may be of use to the military—in this case, the Navy.

More recently, New Jersey sued New York in an effort to gain jurisdiction over the greater portion of Ellis Island, which had been considered part of New York since the early 19th century. At that time, the island was a mere three acres in size, but over time the federal government enlarged the island by 24.5 acres to accommodate larger immigrant-processing facilities. It was the filled-in portion of Ellis Island over which New Jersey sought dominion.

The property actually lies on the New Jersey side of the Hudson River, but the 1834 Compact, an agreement made between the two states and passed by Congress, gave New York jurisdiction of Ellis Island. After considering the facts of the case, the special master noted that the 1834 Compact gave New York jurisdiction of the island only as it existed in 1833, which did not include the 24.5 acres added since then. The special master held for New Jersey, splitting the island so that New Jersey had jurisdiction over eight parts and New York over one part. Unfortunately, if the division were computed exactly along the demarcation lines, several historic buildings would be divided between the two jurisdictions. The special master tried to solve this problem by giving the facilities to New York, but the Supreme Court held that this was not permitted because of the wording of the 1834 Compact. So the bulk of Ellis Island is now under New Jersey's jurisdiction, and the two states have to figure out what to do with their sections of the border-straddling facilities. *New Jersey v. New York*, 66 U.S.L.W. 4389 (U.S. May 26, 1998).

Supreme Court Profile

The basic function of the Supreme Court—the only judicial body created by the Constitution—is to determine whether federal, state, and local governments are acting in accordance with provisions set forth in the Constitution, which is the supreme law of the land. Once the Court renders a decision, all other courts in the United States are required to follow that rendering in similar cases. This consistency helps guarantee equal justice for all Americans.

As would be expected, the role of the Court and its interpretation of the law occasionally change, depending upon the political and economic beliefs of its members and often the prevailing social climate. The President, with the advice and consent of the Senate, appoints Supreme Court justices, who may remain in office for life unless removed by impeachment for corruption or other abuses of their station—which has never happened.

When deciding a case, the justices discuss the issues in private after receiving written and oral arguments. The chief justice begins the discussion, and the other justices give their opinions in order of seniority. After they all have had their say, they vote in reverse order of seniority—with the newest member casting the first ballot and the chief justice the last. Cases are decided by majority vote; in case of a tie—which may occur when one or more of the justices cannot vote because of a conflict of interest or ill health—the lower court opinion stands.

If voting with the majority, the chief justice selects the justice to write the Court's opinion. If the chief justice is not in the majority, the senior justice who is of the prevailing viewpoint assigns the opinion. In any case, any justice may write a concurring or dissenting opinion.

Mandatory Jurisdiction

In the 1997 term, two cases came up per the Court's mandatory jurisdiction, meaning that a district court opinion is subject to direct review by the high court without going through the circuit courts. One of these dealt with the line item veto, which survived an earlier challenge by six members of Congress who were deemed to have no standing to sue because they were not personally injured by the statute. But when New York City objected to President Clinton's use of the line item veto to cancel a provision that would have forgiven repayment of some $19 million in health-care benefits by the city, the itemized veto was found to be in violation of the Presentment Clause of the Constitution. This particular provision requires all legislation presented to the President to be either signed into law or vetoed. Restating its decision, the Court said that, under the Presentment Clause, legislation becomes law in only one way: First, both the House and the Senate must approve exactly the same legislative text and, second, the President must sign the text exactly as approved and presented by Congress. So the line item veto is unconstitutional unless it is resurrected as a constitutional amendment. *Clinton v. City of New York*, 66 U.S.L.W. (U.S. June 25, 1998).

The second mandatory appeal case essentially arose in a theoretical "what if" arena. Texas recently took steps to ensure that its school districts are accountable for the academic performance of their students. The state set out to accomplish this by enacting a law providing for the appointment of persons or teams of people to oversee specified operations of troubled school districts. These overseers would have the power to accept or reject administrative decisions proposed by principals, superintendents, and trustees and to direct those officials to take defined actions. The overseers could not, however, change tax rates, alter spending levels already approved, or affect the election of trustees.

Texas is subject to the Voting Rights Act of 1965, which prohibits designated states from making any changes affecting voting (some school district officials are elected) without clearance from the federal government. The U.S. Attorney General responded to a clearance request by Texas by preclearing the provisions of the state law while cautioning that specifically using the provisions could violate the Voting Rights Act.

The state filed suit to establish that the management team provisions do not affect voting and thus do not need preclearance. A federal district court refused to hear the state's plea for clearance before the fact: the judge, observing that Texas had not appointed any overseers and had no plans to do so, said that the state could not base its case on possible future events that may or may not occur. The Supreme Court agreed, saying that, if the state is correct and wants to avoid any delays associated with obtaining clearance, it could simply make the appointments, wait to be sued, and prevail in court as it insists would happen in any event. *Texas v. United States*, 66 U.S.L.W. 4234 (U.S. March 31, 1998).

Public Television Debates

Although the justices did not decide any major telecommunications cases last term, they did reverse an appellate court ruling that would have afforded almost any candidate for public office the right to participate in public debates sponsored by a state commission running public television stations. After an Arkansas TV panel decided to host a number of debates among Democratic and Republican candidates for contested congressional seats, a ballot-qualified independent who was not invited to participate (Ralph Forbes) sued. Forbes claimed that his political views were being excluded from the debates in violation of his First Amendment free speech rights.

At the trial, a jury held that, since neither Arkansas voters nor the news media considered Forbes to be a serious candidate, election reporting services were not planning to cover voter response to his candidacy, and he had no campaign apparatus and little if any financial support, Forbes was justifiably excluded from the debates. An appeals court reversed, ruling that all legally qualified candidates have a presumptive right to participate in public debates, but the Supreme Court reinstated the jury's conclusion.

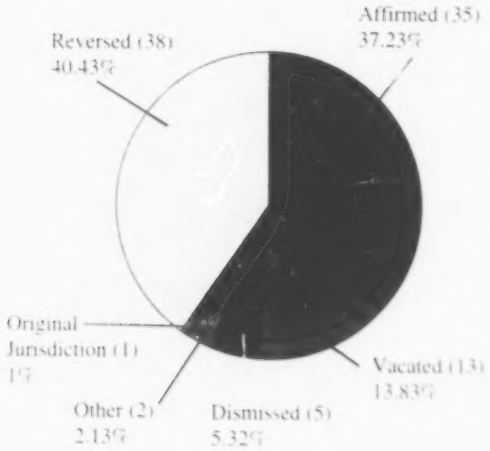
The Court, like the jury, found that the commission acted reasonably in excluding Forbes from the debates because his candidacy had generated virtually no public support. Including him in the debates would serve only to take time away from the allotments available to the two viable candidates, the Court said in *Arkansas Educational Television Commission v. Forbes*, 66 U.S.L.W. 4360 (U.S. May 18, 1998).

Term Overview

Of the 94 lower court cases on the docket this term, 85 came from the federal court system—83 from the circuits and two directly from the districts—nine were appeals from state court decisions, and the last one was the original jurisdiction case related to Ellis Island.

In 1997, the Ninth Circuit, which includes the West Coast, Alaska, and Hawaii, was once again the most reviewed and reversed (now four times in a row). The circuit ended the term with 17 of its decisions challenged and a 3-13-1 record (with six of its 13 reversals by unanimous decisions on the part of the Supreme Court). This is an improvement on its record for the 1996 term, which was 1-13-8, with seven of the 13 reversals by unanimous decisions and four of the eight vacated opinions actually amounting to reversals.

Oral Arguments for 1997 Term: 94



Adapted from Preview of United States Supreme Court Cases, *no. 8 (July 10, 1998): 77.*

Next in line among the circuits that saw their decisions reviewed by the high court was the Eighth Circuit, with 13 (5-5-3); the Fifth with 12 (6-4-2); and the Seventh and the District of Columbia appeals courts each with eight (3-1-4) and (4-2-2), respectively. On the positive side, the two district courts and the Fourth and Tenth Circuits, each with one case before the Supreme Court, all ended up 1-0-0 in that forum.

The Court heard nine cases from state courts, compared to eight during the 1996 term, 10 in 1995, 12 in 1994, and 27 in 1993. Only three states—California, Florida, and Pennsylvania—had their decisions affirmed, and Pennsylvania was reversed in an unrelated matter. Other state courts suffering reversals were Louisiana, New York, and Oklahoma, while an Alabama case was dismissed and a Maryland decision was vacated.

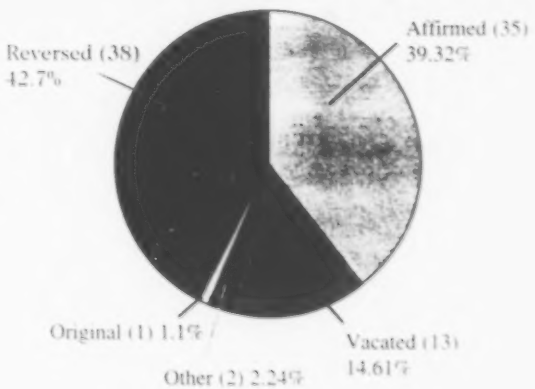
As Previously Reported

Of the three federal court cases previously reported in *Update*, the Supreme Court's disposition of two—*Clinton v. New York* and *Arkansas Educational Commission v. Forbes*—have already been discussed. The third decision, which dealt with perceived restrictions on the funding of creative projects by the National Endowment for the Arts (NEA) came before the Court amidst a disagreement over what is and is not "art."

Following the awarding of NEA grants to photographers who produced images considered offensive by some conservative organizations and the resulting furor they raised as a consequence of widespread media reporting of the photos' contents, Congress passed a law requiring the National Endowment for the Arts to take into consideration general standards of decency in addition to artistic merit in reviewing grant applications.

Led by Karen Finley, a number of artists challenged the statute, and they won at both the district and appeals court levels. The Ninth Circuit concluded that the decency-consideration provision was not "susceptible to objective definition" and thereby gave

Merits Dispositions by Signed Opinion: 89



Adapted from Preview of United States Supreme Court Cases, *no. 8 (July 10, 1998): 77.*

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"rise to the danger of arbitrary and discriminatory application" of the Fifth Amendment's Due Process Clause and the First Amendment's guarantee of free speech.

Reversing, the Supreme Court took the view that Congress had not mandated that only "decent" art be funded; rather, all the legislators did was encourage the foundation to consider standards of decency when reviewing grant applications. The NEA remains at liberty to fund any project it wishes, and art remains in the eye of the beholder. *National Endowment for the Arts v. Finley*, 66 U.S.L.W. 4586 (U.S. June 25, 1998).

Sandra Day O'Connor

Reuters/Corbis-Bettmann

The first woman appointed to the Supreme Court was Justice Sandra Day O'Connor in 1981. Born March 26, 1930, in El Paso, Texas, Sandra Day spent her early years in El Paso and later on a family ranch near Duncan, Arizona. She received her bachelor's degree in 1950 and law degree in 1952 from Stanford University—coincidentally, Stanford's 1952 law school graduates included Chief Justice Rehnquist. Following graduation from law school, Day married classmate John O'Connor III.

Beginning her legal career in private practice, O'Connor became an assistant state attorney general in Arizona in 1965. After being appointed to an unexpired term in the state senate in 1969, she was elected to the seat in 1970, and in 1973 became majority leader of the state senate in which she served until 1975. In 1974 she won election as a judge of the Maricopa County Superior Court in Phoenix, a position she held until 1979, when she was appointed to the Arizona Court of Appeals. President Reagan nominated O'Connor as an associate justice of the Supreme Court in July 1981, and in September she took the oath of office after her confirmation by the United States Senate.

Be Cybersafe

To protect your computer system, files, and credit rating from cybercrooks (and mundane accidents), computer experts like Scott Charney of the Justice Department's computer crimes section recommend a few simple precautions:

- Use common sense. Opportunities—real and bogus—abound on the Internet. If it sounds too good to be true, it probably is. Deal only with established companies.
- Keep sensitive information off networks or in encrypted files. The Internet was designed to foster easy access, not privacy or security. E-mail messages and other Internet communications can pass through many computer systems, and any number of people can see them—not just hackers but also system administrators monitoring traffic.
- Question your computer security. Is your password something obvious—your nickname or initials, for instance? Worse, is it written down and taped to your computer? Do you have sensitive files that might be accessible to others? Are you failing to encrypt information worth stealing?
- Install anti-virus software and update it regularly. Most new computer systems these days come with anti-virus programs, but malicious hackers are creating new viruses all the time, and an epidemic can spread amazingly fast.
- Be wary of files from people you don't know. Reading E-mail is safe, but opening files attached to an E-mail can be dangerous: You could unwittingly activate a "bomb" that could shut down your system or unleash a virus.
- Back up all important files. Ask yourself how damaging it would be if your hard drive were erased right now. Anything you're not willing to lose should be backed up; backups of particularly important files should be stored offsite.
- Monitor children's use of the Internet. Put the family computer in a room with lots of parental traffic. If you can't always supervise, install blocking software to screen out objectionable materials. Keep children out of chat rooms, unless they're monitored and certified as kid-safe.

Adapted from ABA Journal, *October 1997, pp. 70–71.*

Case Study: Sexual Harassment

Gebser v. Lago Vista School District

66 U.S.L.W. 4501 (U.S. June 22, 1998)

Petitioners: Alida Star Gebser
Respondent: Lago Vista Independent School District

Adapted from Preview of United States Supreme Court Cases, *no. 8 (July 10, 1998): 63–64.*

Federal law provides that no person "shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." The discrimination part of this provision has been interpreted to include sexual harassment or abuse by public school administrators, teachers, or other school employees. While the remedy for discrimination in education, per se, encompasses remedial action or termination of federal funding if such action is not taken, students alleging sex discrimination may sue their school districts for damages.

But even though sexual affairs between students and educators are considered a form of abuse classified as discrimination, the question remained about the circumstances under which a school district would be liable for an employee's sexual abuse or harassment of a student. In this case, a female student sought to collect damages from a school district as compensation for her having had an affair with a teacher, a relationship that no official of the district knew about.

FACTS

Alida Star Gebser became involved with a male teacher named Frank Waldrop in 1991, when she was an eighth grade student in the Lago Vista School District. Waldrop began his pursuit by making suggestive comments to Gebser and other female students; then under the guise of going to her home to give her a book, he initiated an affair with Gebser. The liaison, which included sexual intercourse, lasted about a year and ended only after the two were discovered in a compromising position by a local police officer.

Somewhere along the line, Waldrop's principal—having received parental complaints related to the teacher's suggestive remarks to female students—advised Waldrop to be more careful in dealing with the students. That was the extent of the district's response to Waldrop's behavior until the affair was made public and came to the attention of school officials, at which time Waldrop was fired. Dissatisfied with that action, Gebser and her mother sued the district in state court, alleging violations of both state and federal laws for which they sought compensation.

Because of the legal duality of the allegations, the district was successful in removing the case to a federal court, which said that the federal education discrimination provisions do not impose damage liability on school administrators unless they have some type of notice of misconduct on the part of their employees (in this case, Waldrop) and fail to act on the matter. An appeals court affirmed, ruling that a school district is not liable for damages for teacher-student sexual abuse (affairs) "unless an employee who has been invested by the school board with supervisory power over the offending employee actually knew of the abuse, had the power to end the abuse, and failed to do so." Since no district official was shown to have any knowledge of Waldrop's misconduct before his firing, there was no liability for damages under the federal education discrimination statute, the appellate court said.

DECISION

Affirming, the Supreme Court adopted the actual knowledge test applied by the appeals court. At the very least, damages liability under the applicable law requires a showing that an official "who at a minimum has authority to address the alleged sexual misconduct and institute corrective measures" makes an official decision not to do so.

Although the Court's decision limits school district liability for damages under federal law to those instances when someone with the power to stop sexual misbehavior makes an informed decision to not take remedial action, remedies under state law against both the perpetrator and the employing school district are generally available.

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Case Study: Attorney-Client Privilege

Swidler & Berlin v. United States

66 U.S.L.W. 4538 (U.S. June 25, 1998)

Petitioners: Swidler & Berlin
Respondent: United States

Adapted from Preview of United States Supreme Court Cases, *no. 8 (July 10, 1998): 70–71.*

Our system of justice dictates that some secrets be kept from the prying eyes of prosecutors—not many, but some. One such communication that has long been considered not subject to disclosure is that between attorneys and their clients. This permits clients to tell things to their lawyers that they might not disclose if they thought others would have access to the information. When interacting with their attorneys, clients may admit to something that they would rather not admit to or confess to the commission of unrelated actions that could subject them to suits for monetary damages, but those communications are privileged.

Questions arise in this case: Does the privilege hold up after the death of a client who may have told his attorney something that could be vital to the prosecution of another case? Does it apply when the protection afforded to a client is no longer necessary because he is dead? Since the privilege is calculated to facilitate communications only between defendants and their legal defenders, when no further interaction is possible, why should the privilege be available to attorneys who have what might be considered vital information in conjunction with other litigation?

FACTS

In 1993, Deputy White House Counsel Vincent Foster met with attorney James Hamilton of the law firm Swidler & Berlin. Foster was considering hiring Hamilton to represent him in connection with possible congressional and other investigations into the dismissal of employees of the White House Travel Office. In the course of their conversation, Hamilton made handwritten notes. Nine days after that meeting, Foster committed suicide.

One of the players involved in these investigations was Independent Counsel Kenneth Starr who was probing a number of incidents involving President Clinton and his White House staff, including those fired from the Travel Office. In 1995, Starr obtained subpoenas from a federal grand jury for the notes taken during the Foster-Hamilton meeting.

Hamilton responded by filing a motion to quash the subpoena—to deny its enforcement—in federal district court, arguing that the notes were protected by the attorney-client privilege. The district court agreed with the attorney and refused to enforce the subpoena, but the District of Columbia Circuit reversed after holding that the attorney-client privilege could not be considered absolute. Applying a balancing test, the appeals court created an exception to the privilege under which otherwise privileged communications could be disclosed after the client's death if the documents were potentially important to a criminal inquiry. In light of this exception, the court ruled that the handwritten notes were not privileged.

DECISION

Taking the case on an expedited basis, the Supreme Court reversed the D.C. circuit's opinion and held that the Foster-Hamilton notes are indeed protected documents. In so ruling, the Court said that the attorney-client privilege is among the oldest protections recognized by law, and that the privilege extends to a client's confidential communications even after death. Indeed, if this were not the case, there would be no need for the principal exception: privileged communications by the maker of a will can be disclosed in will contests. The Court also suggested that the will-contest exception might be better thought of as an implied waiver of the privilege, available only so that attorneys may shed some light on the true intentions of the deceased.

Also rejected was an argument by the independent counsel that the attorney-client privilege is analogous to the Fifth Amendment's protection against self-incrimination, which falls when death precludes the need to shield a client from the criminal consequences of confidential statements made to an attorney. According to the Court, there are many noncriminal reasons why clients might not want confidential matters made public—for example, a desire to avoid harm to family or friends.

In any event, the justices said that, if clients were afforded privilege with respect to confidential communications only during their lives, the constricted protection would discourage the attorney-client exchanges that the privilege is intended to facilitate. In short, the Court could find no persuasive reason to abandon a centuries-old protection.

Update on Congress

A Review of Current Issues Facing Congress

Update on Law-Related Education, 22.2, 1998, pp. 27–30. © 1998 American Bar Association.

Clock Ticking in Legislative Arena

Time is running out. Congress has little time left to devote to legislative matters—including those for telecommunications—since the legislators are scheduled to recess in early October in order to prepare for the November elections.

In any event, the 105th Congress has not been overly active when it comes to telecommunications law. One proposal, dealing with cellular phone fraud by distributors, actually made it through the legislative process and became law. To date, that feat stands alone. Recently, however, the Senate passed a bill that would tighten existing prohibitions on unauthorized switching of consumers' telephone services, and the House approved a bill designed to open international communications satellite transmissions to private industry. Neither bill has yet to be considered by the other legislative body.

While Congress has considered amending an Internet anti-obscenity statute deemed unconstitutional by the Supreme Court, all that developed during this Congress were introductions of related bills and supportive speeches in the Senate. At this late date, it is doubtful that the stricken Communications Decency Act of 1996 will be acted upon in any meaningful way this year.

These telecommunications proposals join other pending legislation that will expire with the close of this Congress. Bills expire much more often than not since only about 3 percent of the bills introduced during any given session of Congress—a two-year period—become law. Even appropriation bills, which are essential for the government to operate in an effective manner, sometimes fall by the wayside. When this happens, the bills are supplanted by what is called a "continuing resolution," which permits federal agencies to operate at the funding level of the previous year (or at a higher level approved by the House, if applicable).

Telephone Service: Senate Slams "Slamming" Schemes

"Slamming" is the unauthorized changing of customers' telephone exchange or toll services and, as a result, slammed consumers may be afforded lower-quality service and/or higher rates. Sometimes phone users are not even aware that they have been switched to another telephone service until they see their bills. Slamming has happened to thousands of phone users, and the problem is expected to become more prevalent if Congress does not enact stringent anti-slamming measures.

There are many ways in which a carrier can slam a consumer. According to the Senate Commerce Committee, some long-distance sales representatives misrepresent themselves by claiming that they are calling on behalf of some well-known firm or are working with the local telephone company to consolidate local and long-distance phone bills. Others use false third-party verification or deceptive telemarketing practices as a way to obtain authorization for carrier changes from customers. Or they may falsely state that they received the consumer's verbal consent for the switch.

Despite the best efforts of the Federal Communications Commission (FCC) to stop these practices, aggressive long-distance telemarketers continue to mislead consumers. In its fall 1996 Common Carrier Scorecard, the FCC said that more than one-third of the written complaints it had received related to slamming, and these gripes have become the fastest-growing category of complaints reported to the agency. In 1997, 44,000 consumers complained of switches—a 175 percent increase from the 16,000 complaints received in 1996.

But that is not the half of it. According to the National Association of State Utility Consumer Advocates, slamming is now the largest single consumer complaint received by many state consumer agencies, and as many as one million consumers are switched annually to a different provider without their knowledge or consent.

Since 1996, the date of enactment of the Telecommunications Act, no telephone company may legally submit or execute a change in a consumer's selection of a service except in accordance with the FCC's verifica-

tion rules. Upon adoption of these procedures by the agency, any carrier that illegally charges for phone services will be liable to the consumer's original carrier for an amount equal to all charges paid by the consumer to the unauthorized carrier.

One reason that the problem persists is that it is often difficult to prove that a provider switched a consumer to its service without the consumer's consent. Without this evidence, slammers go unpunished. Another reason is that the majority of consumers who have been fraudulently denied the services of their chosen carrier do not turn to the FCC for assistance because the agency's processes are confusing and its sanctions are inadequate.

The Senate has passed a bill intended to provide more effective ways to stop slamming. The legislation would establish stringent anti-switching safeguards as well as additional remedies and fines that should discourage carriers from engaging in this practice. It prescribes definitive procedures for companies to follow in making carrier changes, provides alternative ways for consumers to obtain redress for having been slammed, and gives federal and state authorities the power to impose tough sanctions, including high fines and compensatory and punitive damages. These measures, in addition to those that the FCC and the states may develop, could plug the existing regulatory loopholes and ensure that consumers are afforded adequate protection against slamming.

The Senate-passed measure has an additional benefit. It would also prohibit the practice of "spamming," which entails the mass unsolicited electronic mailings. The bill would permit the targets of these solicitations to remove themselves from annoying mailing lists.

Adapted from Congressional Record, *May 12, 1998.*

A Penny for Your Thoughts

Vacuum tubes were once the cornerstone of the communications industry's technology—today they are dinosaurs. Now there are computer chips that, although only half the size of a fingernail, are equal in power to some five million vacuum tubes. IBM has predicted that, in the not-too-distant future, we will be capable of storing all of the volumes of works in the Library of Congress—representing the largest amount of recorded human history anywhere on Earth, over 16 million volumes worth—on a chip the size of a penny.

Adapted from Congressional Record, *May 12, 1998.*

Cell Phone Anti-Cloning Bill Signed by President

Enforcement of rules prohibiting the cloning of cellular telephones has been made easier for federal agencies charged with exacting compliance with those regulations. President Clinton signed, as Public Law 105-172, a bill that targets manufacturers and distributors of equipment ("black boxes") used to alter the electric serial numbers of cellular phones.

Currently, some 56 million people use cell phones and, according to industry sources, these customers lose in excess of $650 million a year due to fraud—much of it due to cloning. The Secret Service, the federal agency charged with investigating cloning offenses, has doubled the number of arrests made in the area of wireless communications fraud every year since 1991—with 800 individuals charged with cloning cell phones during 1996.

Although the law previously on the books was useful in prosecuting some cloners, the statute did not function well when it came to discouraging cloning at the distribution level. Testifying before the Senate subcommittee on Terrorism, Technology, and Government Information, a Secret Service agent said that, because the law then written required proof of "intent to defraud" in order to successfully prosecute a violation, distributors of cloning equipment were "elusive targets." Distributors were able to circumvent the rules by simply putting disclaimers on their advertising, thereby avoiding a finding of fraudulent intent. This allowed "for the continued distribution of equipment, permitting elements of the criminal arena to equip themselves with free, anonymous phone service," the agent said.

Under the new statute, prosecutors need only prove that an individual "knowingly uses, produces, traffics in, has control or custody of, or possesses hardware or software [while] knowing it has been configured to insert or modify telecommunications information associated with or contained in a telecommunications instrument so that such instrument may be used to obtain telecommunication service without authorization."

Adapted from Congressional Record, *April 1, 1998.*

Internet Gag Removal Lauded in Senate

Restricting the Internet through statutory censorship of "obscene materials" was an idea whose time came and went in the nation's capital. Congress, in an attempt to protect children from being exposed to dirty words or comeons from possible sexual offenders, took it upon itself to ban such language from the Internet. This action was a mistake, according to the U.S. Supreme Court, which ruled that the Communications Decency Act of 1996 violated the First Amendment's guarantee of the right to free speech to all Americans.

"[W]e have repeatedly recognized the governmental interest in protecting children from harmful materials. . . . But that interest does not justify an unnecessarily broad suppression of speech addressed to adults," the Court

said, adding that the government may not reduce the telecommunication options of the adult population to a level that is fit only for children.

Praising the court's decision, Senator Patrick Leahy, D-Vt., said that the statute was "misguided and unworkable [and] reflected a fundamental misunderstanding of the nature of the Internet [and that the law] would have unwisely offered the world a model of online censorship instead of a model of online freedom." Leahy noted that the Communications Act would have put all Internet users at risk of committing a crime. Simply transmitting vaguely defined "indecent" material to a Web site where a minor might see it would have subjected the sender to a potential two-year jail term and large fines. "Mixing government and politics with free speech issues often produces a corrosive concoction that erodes our constitutional freedoms," he said.

Leahy observed that what strikes some people as indecent or patently offensive may have no adverse meaning to others, and a ban on these materials would threaten to drive off the Internet an unimaginable amount of valuable political, artistic, scientific, health-related, and other speech. Some examples:

- A university professor would risk prosecution by making available on line to a first-year literature student such classics as *Catcher in the Rye* and *Of Mice and Men*, which have been challenged as indecent reading material in many communities.
- Forwarding to a child an on-line version of *Seventeen* magazine might violate the law even though the publication is available without restriction at newsstands.
- An E-mail message containing certain four-letter words sent by one teenager to another would violate the law.
- Museums with Web sites may have thought twice before posting images of classic nude paintings or sculptures showing sexual organs.
- On-line discussions about AIDS or other sexually transmitted diseases may have been illegal.

So now the ball is back in Congress' court, and the Senate has in the works a bill that would formally repeal those provisions of the law (which is still on the books despite its unconstitutionality) that relate to obscenities carried over the Internet. The Senate bill would, however, restore language that prohibits persons from using lewd, indecent, or harassing words during the course of interstate telephone conversations.

Adapted from Congressional Record, *January 28, 1997 and June 26, 1997.*

House Endorses Bill to Open Tel-Sat Competition

Communications satellite transmissions are currently concentrated in the hands of state-run monopolies, including the American-based COMSAT, that have divided the international information market to the detriment of private industry, according to House Commerce Committee Chairman Thomas Bliley, R-Va. In shepherding through the House a proposal designed to introduce market forces into the international communications arena—and to discourage the encroachment of intergovernmental organizations as providers of Internet, direct broadcast, and cellular phone services—Bliley said that monopolies by their very nature are noncompetitive.

They are, rather, organizations that are by, for, and of themselves, and "it is high time for them to be privatized," he said. Bolstering his philosophical argument in favor of the bill, he noted that COMSAT's average margin in reselling international communication services "is an amazing 68 percent. Not bad if you can get it, but very bad if you happen to be a consumer. Every cent of COMSAT's high prices comes from the pockets of American consumers." That argument—a pocketbook issue—carried the bill to passage, and the Senate must now act on the measure if it is to become law.

Adapted from Congressional Record, *May 6, 1998.*

Freedom vs. Privacy: A Tangled Web

Increased assaults on personal privacy have prompted demands for legislative action in the arena of Internet information availability—for $7 a California information service will provide the full name, birth date, and social security, telephone, and driver's license numbers of almost any U.S. resident. Most members of Congress and the Federal Trade Commission favor self-regulation of the Internet, but with the addition of 10,000 new Web pages every week, there are bound to be some maverick operations.

Congress, though one of those institutions of, by, and for the people, may not wish to tangle with the Web. Some of the heftiest campaign contributions to members of Congress came from banks, insurance companies, health care conglomerates, credit institutions, and information services—all of which have a vested interest in an unfettered exchange of personal data—according to the Center for Public Integrity. So, what it boils down to is who is to watch the store, guard the coop, or draw the line when it comes to the zone separating the free flow of information and respect for personal privacy.

Adapted from The Indianapolis Star, *August 25, 1998, P.A.*

Student Handout

Check Your Knowledge of Congress

A Note to Teachers: Have students individually, in pairs, or in small groups investigate the U.S. Congress. Use the quiz as a pretest and then have students look for information to corroborate the statements on the quiz. Alternatively, use the quiz as a posttest after students have completed their congressional investigation to see whether they found the facts used in the quiz.

Check the correct completion for each of these statements about the U.S. Congress. Answers appear on page 61.

1. The most important task of the U.S. Congress is
   a. proposing constitutional amendments.
   b. making laws.
   c. approving appointments for high-ranking government officials and Supreme Court justices.
2. Most candidates for Congress are nominated by
   a. primary election.
   b. party convention.
   c. party committee.
3. Respectively, members of the House of Representatives and the Senate must be at least
   a. 28 and 32 years old.
   b. 18 and 21 years old.
   c. 25 and 30 years old.
4. The Senate is called a continuing body because
   a. its membership is never completely new.
   b. it never fully adjourns.
   c. the Senate and the House meet jointly.
5. Article 1, Section 8 of the U.S. Constitution grants Congress the express authority to
   a. coin money, regulate trade, and appoint federal judges.
   b. declare war, raise and equip military forces, and create a federal treasury department.
   c. coin money, declare war, and regulate trade.
6. Congress's constitutional authority to "make all laws which shall be necessary and proper" derives from the portion of Article 1, Section 8, known as the
   a. implied clause.
   b. regulation clause.
   c. elastic clause.
7. Most members of Congress follow congressional debate
   a. personally, in their congressional chamber.
   b. by close-circuit TV, while attending to other legislative duties.
   c. through daily reports and analyses of their aides and other staff members.
8. Members of either the Senate or the House may be expelled by a two-thirds vote of
   a. their constituents.
   b. their own chamber of Congress.
   c. both chambers of Congress.
9. Standing committees of each chamber of Congress are the most important kind and deal with
   a. introduced bills.
   b. investigations and inquiries.
   c. resolution of party differences within the chamber.
10. Members of Congress use various methods of voting on a bill, including
    a. voice vote, roll-call, and ballot.
    b. voice vote, roll-call, and division.
    c. voice vote, roll-call, and cloture.

Source: World Book Encyclopedia, *"Congress of the United States," "House of Representatives," "Senate"*

LRE Project Exchange

Is the Internet a Good Research Tool for Teaching about Law and Government? A Case Study from the Field

Barbara Miller with Jackie Johnson

Update on Law-Related Education, 22.2, 1998, pp. 31–34. © 1998 American Bar Association.

The Challenge

If teachers wait for academics, curriculum developers, and technology specialists to provide a definitive and theoretically and pedagogically satisfying answer to the title question, students will not be gathering data for civic purposes in cyberspace anytime soon. Many teachers view the Internet as such an authentic and important source of data for today's youth that they feel a responsibility to model its potential uses as part of civic education. Unfortunately, much of what has been written on the uses of computer technology in the classroom reveals little hard evidence to show how the Internet is an effective research tool for enhancing learning.

In reading through the literature on uses of the Internet in social studies and civics, one finds a number of sources that help teachers learn the basics of Internet searching and suggestions for introducing students to the language and processes. In contrast, few references are made to "action research" in which classroom teachers consider and then report the costs and benefits of using the Internet in terms of what students are learning. By analyzing the stories that teachers tell us about their successes and struggles in using the Internet to improve student learning and citizenship, we can improve their practice and the training that they receive.

Those teachers who are interested in thoughtful uses of the Internet within civic education face many challenges in designing lessons that address the goal of improved learning. This article features the work of one such teacher who has attempted to confront some of the more serious challenges and to test various approaches for integrating student research on the Internet into her year-long civics and American Studies program.

See Teaching Strategy on page 37.

From a classroom teacher perspective, it would be easy to conclude that teaching students to do Internet research on topics of civics and government is not worth all of the hassles and time that it takes to adequately address the challenges involved. If progress is to be made in making use of the best the Internet has to offer for students, classroom teachers who take the time to complete research on the Internet and then work with experts to develop strategies and critically reflect and report on their classroom practice are the ones who will lead the way.

Following a review of the challenges identified by experts and the case study illustrating the rationale, lessons, and student work submitted by one teacher, you are invited to draw your own conclusions about the degree to which Internet research is promising practices for enhancing civic knowledge.

Critics and Advocates

After researching the Internet as a possible tool for educational reform of social studies, Erik Lund, a historian and teacher trainer at Ostfold College, Norway, concludes, "As a communication system the Internet is superb, but as a retrieval system in its embryonic stage almost useless as a learning tool." Lund finds that the Internet by its own nature (a place for surfing through disorder) is counterproductive to the very fundamentals of learning in which there is need for focus and order.

Bernard Langer, associate professor of the history and philosophy of science at Ramapo College, Mahwah, New Jersey, shares Lund's skepticism about the impact of Internet research on student learning. In writing about the use of the Internet at the collegiate level, he makes arguments that are particularly relevant to teachers of pre-collegiate stu-

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dents: "My skepticism represents a progressive departure from my position of not more than a year ago, viz., that as much junk and debris exist in cyberspace as in cosmic space. It may be attractive and glittering junk, but it is, even by a different name, ontologically still, and mostly junk." He goes on to point out that "much of this junk ends up in student essays as a substitute for authentic and critical scholarship." In forwarding this argument, he states that "the Internet is not a library. Its content ought not have the same status as a scholarly article found in a respected journal simply because the process by which it is produced, reviewed, and accepted for publication does not involve the same institutional and community scrutiny."

Other skeptics of using the Internet as a research tool for students cite more basic and practical concerns: Most schools are inadequately wired and billions will be required to bring services to the classroom. Many teachers report that their classes have access to only one computer or that policies regulating student use are not yet developed. Others await training or software. Some feel that the hype over the Internet is exaggerated.

Cautionary advice on student-initiated research also comes from advocates of the Internet in K–12 classrooms. People who believe that the Internet is an appropriate and exciting tool for students to use in social studies classrooms do not see this technology as a panacea for reforming schools. A quick survey of the literature indicates that advocates of Internet research have spent much of their time considering the practical aspects of familiarizing students with the basics of the Internet rather than on the instructional value of what students are learning.

Donna M. Bertazzoni, associate professor of journalism at Hood College in Frederick, Maryland, points teachers to several "virtual law" libraries that are available on line while cautioning her students "not to abandon their analytical skills while surfing the net. Students must be as careful about information they gather from cyberspace as they are about information they find in the library. They must critically evaluate who is providing the information, what that person or organization's bias is, and whether the information is up-to-date and accurate. Students also need to be directed to research manuals to learn the proper way to cite material they find on the Internet." She recommends that at the collegiate level, professors provide students with a list of useful sites to get them started. At the pre-collegiate level, teachers probably have a higher standard for reviewing sites and checking them more regularly to see if those sites are still valid.

Charles S. White, associate professor of elementary education at Boston University, an expert in social studies and technology and a proponent of using the Internet for instruction, emphasizes that, at its best, the Internet is a tool that should be selected after the tough instructional decisions are made. He urges teachers to begin by establishing the learning outcome before selecting and adapting particular types of technology. In White's model of teaching with technology, emphasis is placed on teaching students enough content so that the learners have the background to effectively evaluate what they are finding. He points out that students cannot be expected to have success in retrieving information if they do not have some context or background for selecting key words or evaluating the bias and value of the information that they find. He cautions teachers that technology will most likely follow and support but not lead educational reform efforts.

Criteria for Using the Internet in Civic Education

In reviewing the concerns of both proponents and critics of Internet research, the following questions emerge for evaluating lessons and Internet assignments.

- Has a valid (or authentic) use of the Internet been identified for the assignment?
- Does the Internet enhance the learning goal that is being addressed? Could the content be accessed more effectively elsewhere?
- Are the students learning more through the use of the Internet? Are they learning better?
- Are they being asked to think critically about what they have found?
- Has using the Internet changed the lesson outcome? If so, does it enhance or detract from the outcome?
- What new or extra work is required of the teacher? Is the result worth the effort?

Jackie Johnson's Story

During the 1997–98 school year, as part of her professional development plan at Campus Middle School (Cherry Creek Schools, Colorado), Jackie Johnson looked for opportunities to integrate student research on the Internet into her eighth-grade American Studies program. Because Johnson is strongly committed to two educational reforms—interdisciplinary and standards-based instruction, the nine lessons to which she added a technology component reflect and support these values.

Johnson's primary motivation for delving into the Internet (beyond the fact that at least for the present time, her students enjoy technology and are motivated by it) was to enhance what students learn about citizenship, law, and government. In using the Internet, she hoped to find helpful primary source materials that are not readily available to her students in the school library. She also hoped to give new life to some successful but well-worn lessons.

Fortunately for Johnson, the school where she teaches has already addressed many of the concerns about availability of technology. The school has state-of-the-art wiring, new computers (250 computers are available for

1,500 students), and technology expertise. The school's Web site (www.cms.ccsd.k12.co.us/) features information about each subject area by grade level as well as links to sites that are key to assignments. Students sign a district policy stating that when using school computers, they will visit only those sites that are approved by the school.

"One of our reasons for requiring students to use the Internet is to enhance the collections in our school library. The Internet can provide depth for many topics. The Civil Rights Act of 1968 is an example of a topic for which students who have access only to print will probably look on microfilm for *Time* or in an encyclopedia. The Internet provides access to the Johnson Library where students can read the actual law and read about the background on its passage. At the same time, I do not want them to get the idea that they can use the Internet as the single source of information. It is one of several sources that they use."

Teacher as Learner and Researcher

Clearly defining why she was introducing Internet research to her students was the first step in Johnson's development process. Her overarching goal and criteria for measuring whether she met her goal was the degree to which Internet-based lessons enhanced student-achievement on the civics standards. Johnson field-tested each of the nine lessons and assessed student learning on the civics standards using traditional, performance, and portfolio methods and reflecting on the quality of student work compared with that of students in previous years.

Johnson also spent time networking and collaborating with colleagues who have an interest in technology, particularly Keith Katte, a technology specialist at her school. "What I've learned from technology experts is invaluable. Keith helped me put ideas into practice that I would not have tackled by myself. Jim Giese at SSEC got me started by suggesting some sites and search strategies that he had used. My mentors were good at not overwhelming me. As helpful as they were, their assistance didn't replace the need for a good lesson plan."

Examples of help that an LRE teacher might ask for from a technologically informed colleague include the following. "Keith is so open to trying new things. I find sites that he puts up as links or as 'Jackie's bookmarks' on the Campus Middle School Web page. He showed me many shortcuts and refinements for helping student researchers be more efficient. One helpful lesson was showing us how to use a divided screen so that students could write or take notes on one side of the screen at the same time they were reviewing documents from the Internet on the other.

"When I wanted to put an 'unmarked case study' on our Web site for our First Amendment book banning lesson, he helped me with the format even though he had no idea what the case study was about. Together we went to the Cornell site, and I would say, 'pull the arguments for each side and put them on one page and put the opinion on a different page since [the students] will use that at a later time.' It was his suggestion that we add a picture of the current justices."

Johnson recommends using an exemplary lesson that is already developed as a starting point. Her introductory lesson was available from the Library of Congress' American Memory collection, *The Historian's Sources* (http://lcweb2.loc.gov/ammem) for teaching the skill of historical thinking using slave narratives. "Using an actual lesson that modeled good use of primary sources was a building block to doing my own lessons."

Student Training

Learning to use the Internet in social studies may involve some unlearning on the part of many students, Johnson reports. "I would guess that as many as 60 percent of my students have computers at home, and many of them surf quite a bit on their own. I wanted to teach them some type of discipline in finding information relevant to our class. Some kids just want to do a Yahoo search because that's what they do at home. Getting them to worthwhile sites and requiring them to do some thinking while they are there was a challenge. I needed to remind them that clicking is not thinking.

"I know because I had the same experience when I was first introduced to the Web. I clicked everywhere. The instructor went crazy with a classroom of teachers each doing his or her own thing. I decided not to let this happen in my classroom. If adults do this, you know kids would. It's the candy store. My approach was to say this is the lesson and these are the sites. Our school has a contract that students sign saying they will not go off the designated instructional sites, or they will lose their privileges; so teachers at my school are not likely to give a surfing assignment. They might allow a Yahoo search and then go through the list of hits with the student."

The initial session for student training in early September involved a review of the work of the three branches of government. During a 43-minute period, students visited three government sites—Congress, White House, and Supreme Court. During the training, pairs of students were asked to retrieve a specific piece of information from each site. Parents were introduced to the lesson and the policies at back-to-school night.

Selection of Web Sites

A large part of her role, Johnson believes, is locating and evaluating the best sites and then monitoring them to see how they work for her students. "This work is somewhat analogous to lessons in which I might ask the librarian to pull relevant materials." She estimates that she invested at least eight hours in researching the sites for her "Expansion

of Rights" lesson. If she uses the lesson next year, she will check these sites again (for currency, accuracy, etc.) and edit the assignment accordingly.

In thinking about the criteria that she uses for selecting sites, Johnson mentioned authenticity as a key consideration. "Scholars, lawyers, citizens who want information about their government and law use the same sites that I do. My students know that they will be expected to do something with the information that they find. This might be writing their own Supreme Court opinions or looking for evidence to support the thesis of a research paper."

Johnson shares the bias of Lund and Langer about the limitations of open-ended searches. "My interest is having students focus on the primary sources or other data that are at the core of my lesson. It's possible that kids might type in 'U.S. Constitution' and never get to Archives. The teacher brings a context and background knowledge to sort through the sites that students cannot be expected to have. At some point, students need to learn to make decisions about the value of information that they find by surfing—but not in my 43-minute period."

Critical Thinking

In Johnson's experience, the key is to make sure that students have something to do and to think about when they visit a site. One of the techniques that Johnson uses to encourage students to think critically about what is on the computer screen is to limit the number of pages that each student can print. She believes that this policy encourages students to evaluate which information is most important, and limiting the number of pages discourages students from copying information directly. Since the class shares a printer, the page limit serves a practical purpose as well.

Students in Johnson's class are required to do some written or verbal analysis of what they are finding at the site for each assignment. "I expect my students to evaluate the sites that they use even though I have selected them. There is junk out there, and I want them to develop the habit of evaluating the source and bias related to what they are reading on the Internet."

Next Steps

Reflecting on her experience, Johnson feels that the investment of time and effort paid off for her and for her students. She has learned a great deal about strategies for using the Internet for student research—many of which she will continue to use. Her efforts as an "action researcher" are still inconclusive as to the question of student achievement.

How effective do you think Johnson has been in her effort to use the Internet in preparing students for citizenship? Which challenges has she responded to? Which remain? Johnson welcomes your feedback and suggestions for Web sites and further refinements. You may contact her at jjohnson@ccsd.co.us.

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Technological Ebolas

Hearing about parents who supposedly abused their teenage daughter, another teenager posted a message on the Internet about the alleged mistreatment. He also posted the family's phone number and urged readers to call the family to express disgust.

The incident raises questions about using the Internet to post defamatory statements. An unregulated Internet relies on responsible users. If there is no legal remedy, are we facing a technological Ebola?

The message reportedly generated numerous threatening phone calls. It claimed that the family confined the girl to home when she wasn't in school or at work, she was forbidden to use the phone or to have friends, and she was fed only peanut butter and jelly sandwiches.

The girl discussed her family life during a private group discussion for children with emotional difficulties. A student in the group reportedly shared the information with White, who then posted it on the Internet.

Adapted from ABA Human Rights, *Spring 1996, p. 21.*

A Teen Court Web Site: Starting Locally—Reaching Globally

Paula A. Nessel

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Real estate agent, former teacher, and long-time American Legion Auxiliary member Lolita Junk was concerned with the growing epidemic of juvenile crime in her small city, Galesburg, Illinois. When national auxiliary president Helen Holcum encouraged auxiliary units to implement teen courts to prevent crime in their communities, Ms. Junk proposed that her local unit take the lead in establishing a teen court in Knox County, where Galesburg is located. "Teen court" is a general term describing courts that include juveniles as members of the jury, whether in a school or a community setting. These courts may also have young people fulfilling the roles of prosecuting attorney, defense attorney, judge, bailiff, or other officers of the court. In most teen courts, young people are voluntarily referred for sentencing, not for a decision of guilt or innocence. There are, however, many different models of courts, including some that decide guilt and some that use a panel of "peer jurors" who question the defendant directly (without prosecuting and defense attorneys). Young offenders choose teen court, usually with parental approval, as an alternative to an existent sentencing agency or disciplinary office. Offenders who prefer legal representation and/or the regular court or sentencing system can decline referral to teen courts.

In Galesburg, a steering committee was created to explain the teen court program to the community, and by November 1994, the committee sponsored a meeting at the Knox County Court House with representatives of 26 different agencies and groups to seek their support. A 15-member Advisory Board was formed, and the Knox County Teen Court was implemented (through much volunteer effort) by September 1995.

Among the many groups Ms. Junk approached in the planning stages were the local schools. Her explanation of teen court to Sheryl Hinman's journalism class at Galesburg High School not only encouraged student participation in the court but also inspired students Tim McAndrew and Mike Hunigan to decide to make Knox County Teen Court the subject of their entry to ThinkQuest, a national contest for student-created Web sites sponsored by Advanced Networking Services.

Knox County Teen Court volunteers undergoing training.
Courtesy of Galesburg High School

With Ms. Hinman and Ms. Junk as their advisers, the two students designed a Web site that described the Knox County Teen Court—

- mission statement,
- bylaws,
- procedures manual,
- judge's manual,
- offense list, and
- the roles of court personnel, e.g., jurors, bailiff, prosecutor,

and gave other relevant information—

- statistics on juvenile crime,
- the "Top 10 Reasons to Establish a Teen Court,"
- hints for starting a teen court,
- two mock trials to use for training teen court volunteers, and
- links to law-related Web sites.

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Web site designer Mike Hunigan filming mock trials and interviews for use on the Web site.

Courtesy of Galesburg High School

The students divided the responsibilities of site creation. Sophomore Tim McAndrew did the writing, proofreading, and translations into html (the Web site code). Senior Mike Hunigan designed the site's page layouts, located and/or created computer-program scripts, and problem-solved management of the data. Together they estimate they spent over 2,600 hours creating and maintaining the site.

As the team's teen court coach, Lolita Junk provided information about all aspects of teen courts and access to the teen court documents. As teacher/coach to the team, Sheryl Hinman provided frequent input about content and design, meeting with the students once a week during the school year. As the ThinkQuest contest deadline neared, Hinman worked with McAndrew and Hunigan 2 to 3 days per week.

The students had their Teen Court Web site up and running at http://tqd.advanced.org/2640 by October 1996. It was publicized to local and national media, and by December 21, the site received 31,691 accesses. Awards for the Web site began flowing in, including a ThinkQuest Gem award in 1997, which provided $12,000 in scholarship money to each student-creator and $2,000 each to the coaches, the creators' high school, and Knox County Teen Court. In addition, Sheryl Hinman was one of two winners of the ThinkQuest 1997 Coach of the Year Award.

The time needed to create a Web site can vary from a few days to five hundred or more hours. Sheryl Hinman has the following suggestions for teachers whose students are interested in the creation of sites: "I'd encourage people to keep a Web team small—one to three students. The ThinkQuest Web site (http://www.advanced.org/thinkquest) has many excellent resources and links to educate students about Web building. I think some of the best sites are those that make use of local resources. What programs are successful in your community? For example, your community may have been the site of a historical event; there may be people who have dramatic stories to tell dealing with issues such as unions, civil rights, etc. Human stories never go out of fashion. Students are in a unique position to educate their peers through the Internet."

The Knox County Teen Court Web site is an outstanding achievement. When the teens and coaches were asked what they considered to be the most valuable result of their participation in the site creation, Mike Hunigan responded, "[It was] being able to provide information that will change my peers' lives forever . . . and knowing that you contributed to changing the outlook of a teen going bad." Tim McAndrew noted that his participation gave him "the opportunity to work with others on an ambitious project and to help people across America, people we don't even know, develop a system to help fight juvenile crime in their area." Sheryl Hinman added, "One of the greatest memories I will have was when we learned that courts have been started in various communities because of the site's material. The power to make society change is awesome."

Ask Lolita Junk about making changes in society, and she has a list of achievements made by the Knox County Teen Court. She believes the beneficiaries of the court are not only the young offenders but also the student volunteers and the community as a whole.

- The offenders receive sentences that help them recognize the seriousness of their acts and give them an opportunity to make a positive change in their lives . . . a second chance. The overall recidivism for those who have completed their sentences is only 10.2 percent.
- The student volunteers receive positive peer pressure to stay out of trouble. Only one of the 250 student volunteers has been arrested, and that was for driving too fast for conditions.
- The community benefits from a significant number of community service hours (over 8,000) performed by offenders fulfilling their sentences and a lower incidence of crime. According to State's Attorney Paul Mangieri, juvenile crime is the only crime in Knox County that is down this year. Randy Storm, director of the county's juvenile detention center, testified that juveniles at the facility numbered 10 per day in 1997 compared to 12 per day in 1996. He attributed the decline to the Teen Court program.

The Knox County Teen Court and its Web site required dedication and time from their creators. Each of them began with personal commitment and the persistence to pursue what was necessary to make the project work. The results are more positive than they could have hoped for.

Teaching Strategy

Expansion of Rights in American Law and Society

Using the Internet for Research

Jackie Johnson with Barbara Miller

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Background

The process of expanding constitutional rights and protections has involved both setbacks and gains. In this lesson, students select and research one significant event, using the Internet and traditional sources. They present their findings and evaluate the Web sites.

Objectives

As a result of this lesson, students will

- Describe how the actions of groups with different opinions led to the expansion of democratic rights
- Evaluate Web sites for their usefulness in LRE research

Target Group: Junior high and high school
Time Needed: 2–3 classes
Materials Needed: Internet access, Student Handouts 1 and 2

Procedures

1. Have students identify groups of Americans who were excluded from constitutional protections when the Constitution was written in 1787. Review strategies that groups have used to achieve protection of their rights: new laws, amendments to the Constitution, Supreme Court decisions.
2. Arrange for your students to use the school's computer lab for their Internet research. If the school does not have facilities, try to schedule blocks of time at the local library for your students.
3. Explain that students will research one topic for a research paper and also evaluate the resources they use. With the assistance of the language arts teacher, the research paper can also have an interdisciplinary focus. Distribute Student Handout 1, "Expansion of Rights in American Law and Society." Students should select one topic from the list for their research, using the suggestions given on the handout as starting points. Explain that their research must include at least two Internet resources and each Internet site must be evaluated. (See Student Handout 2.)
4. To provide significant information for the entire class about all the topics on the list, students should review their papers to synthesize their research. They should focus on the most relevant information about their event and an analysis of the importance of their event in achieving fairer treatment for various groups of Americans. Students can then display this information on a poster for the entire class to view. Allow time for them to share their topics with the entire class. Teachers might create a "poster gallery," arranging students' posters in chronological order.
5. Conclude the lesson by conducting a discussion about the significance of the events students have researched. Which events do students feel were most critical in expanding constitutional protections and defining equality in American law and society? What methods have been used by groups to achieve equality? What groups have experienced gains and setbacks in the movement toward equal rights and opportunities in our society?
6. To evaluate the effectiveness of the Internet as a research tool, ask students to reflect upon the authenticity, reliability, and accessibility of the Internet sources they used in completing this assignment.

See the articles on pages 4 and 8 for background information.

Family On Line

Charles Suphan probably would have never found a mother's three missing daughters without the help of public information available on line and on computer CDs. Suphan of the Suphan-Hart law firm in Little Rock, Ark., has been conducting searches for lost friends and relatives free of charge for several years. In 1995, Suphan took on the task of finding Dorothy Oriondo's daughters who were abducted by their father. Thanks to Suphan and on-line resources, Oriondo and her daughters were reunited after 26 years.

Adapted from ABA Human Rights, *Fall 1997, p. 22.*

Student Handout 1

Expansion of Rights in American Law and Society

Throughout history, Americans have defined the word *equality* in different ways to include various groups of Americans. As you recall, with the ratification of the Constitution in 1789, the rights of citizenship were extended only to white males who owned property. Today, the meaning of the word *equality* continues to be an important and enduring theme in American law and society. It is important for us to reflect on the gains and setbacks throughout our history in achieving fairness and equality for all Americans—regardless of race, ethnicity, sex, age, or religion. Thoughtful reflection about these significant "turning points" enables all of us to continue the discussion about fairness and equality in American society today.

Given the event that you have selected from the list below, you will write a research paper for language arts and social studies that includes the following:

1. a thesis statement (gain or setback);
2. a description of your event: who, what, when, where, why;
3. the legal/constitutional source(s) of the rights sought (or in some cases, denied) in your event;
4. the strategy used to achieve the gain or setback for your event (new amendment, Supreme Court decision, new law); and
5. an analysis in which your reasoning is explained.

NOTE: You must use and correctly cite a minimum of four sources. Two must be accessed from the Internet; two must be print resources.

Topics and Web Sites for Research Papers

1. 1776: DECLARATION OF INDEPENDENCE
http://lcweb.loc.gov/exhibits/declara/declara1.html
http://www.nara.gov/exhall/charters.html (Then scroll down.)

2. 1789: BILL OF RIGHTS
http://pacific.discover.net/~dansyr/billrigh.html
http://www.nara.gov/exhall/charters/billrights/billmain.html

3. 1836: TRAIL OF TEARS
http://ngeorgia.com/history/nghisttt.shtml

4. 1841: THE AMISTAD CASE
http://www.amistad.org/
http://amistad.mysticseaport.org/main/welcome.html

5. 1850: FUGITIVE SLAVE LAW
http://www.people.virginia.edu/~mgm5u/intro.html

6. 1852: UNCLE TOM'S CABIN
http://www.teleport.com/~rsoft.com/Library/lit/stowe/contents.htm

7. 1857: DRED SCOTT DECISION
http://library.advanced.org/11572/cc/cases/dred_scott.html
See Web sites listed for *Plessy v. Ferguson.*

8. 1863: EMANCIPATION PROCLAMATION
http://www.nps.gov/ncro/anti/emancipation.html
http://www.libertyonline.hypermall.com/Lincoln/index.html
http://www.triadntr.net/~rdavis/mlkdream.htm

9. 1865: THIRTEENTH AMENDMENT
http://www.findworld.com/data/Constitution/amendment13/

10. 1865: FOURTEENTH AMENDMENT
Use same site as Thirteenth Amendment; scroll to Amendment 14.

11. 1870: FIFTEENTH AMENDMENT
Use same site as Thirteenth Amendment; scroll to Amendment 15.

12. 1876–on: JIM CROW LAWS
http://www.pbs.org/newshour/bb/race_relations/OneAmerica/jim_crow.html
http://www.ushmm.org/olympics/zcc036a.htm
http://njtimes.rutgers.edu/Segreg.htm

13. 1890: WOUNDED KNEE
http://hanksville.phast.umass.edu/june95/lakota/Wounded_Knee.html
http://dickshovel.com/WKmasscre.html

14. 1896: PLESSY V. FERGUSON
http://www.findlaw.com/ Then go to "Supreme Court Opinions." Scroll down to "Party Name Search." Type in name of case.
http://www.law.cornell.edu/ Then click on "recent" or "historic."

15. 1920: NINETEENTH AMENDMENT
http://www.san-marino.k12.ca.us/~nicksun/stb/stb10.html
See also Web site for Thirteenth Amendment.

16. 1935: SOCIAL SECURITY ACT
http://www.fatty.law.cornell.edu/uscode/42/ch7.html

17. 1942: EXECUTIVE ORDER 9066
http://www.igc.org/clpef/
http://www2.hawaii.edu/~soeda/9066.html
http://weber.u.washington.edu/~mudrock/ALLEN/Travel/
http://dizzy.library.arizona.edu/images/jpamer/execordr.html

18. 1954: BROWN V. BOARD OF EDUCATION
http://www.wmich.edu/politics/mlk/
See also two court sites listed for *Plessy v. Ferguson.*

19. 1955: MONTGOMERY BUS BOYCOTT
http://www.grandtimes.com/rosa.html
http://socsci.colorado.edu/~jonesem/montgomery.html
http://www.wmich.edu/politics/mlk/

20. 1960–61: FREEDOM RIDERS
http://www.nwarktimes.com/archive/news/news92397/docs/news9.htm

21. 1962: GIDEON V. WAINWRIGHT
http://www.nationalcenter.inter.net/cc0727.htm
See also two court sites listed for *Plessy v. Ferguson.*

22. 1963: MARCH ON WASHINGTON
http://www.triadntr.net/~rdavis/mlkdream.htm
http://americanhistory.miningco.com/library/weekly/aa082597.htm
http://americanhistory.miningco.com/library/weekly/aa090297.htm

23. CIVIL RIGHTS ACT OF 1964
http://www.lbjlib.utexas.edu/johnson/archives.hom/biographys.hom/lbj_bio.htm (Then scroll to 1964.)
http://fatty.law.cornell.edu/uscode/42/1971.shtml

24. 1965: SELMA MARCH
http://www.asc.edu/archives/teacher/rights4.html
http://www.igc.org/clpef/
http://www.wmich.edu/politics/mlk/

25. VOTING RIGHTS ACT OF 1965
http://www.wmich.edu/politics/mlk/
http://www.ksg.harvard.edu/caseweb/abstracts/75112.htm
http://www.lbjlib.utexas.edu/johnson/archives.hom/biographys.hom/lbj_bio.htm (Then scroll to 1965.)

26. 1966: MIRANDA V. ARIZONA
http://www.findlaw.com/ Then go to "Supreme Court Opinions." Scroll down to "Party Name Search." Type in name of case.

27. 1969: TINKER V. DES MOINES
http://www.abanet.org/publiced/lawday/tinker.html#tinke

28. 1971: TWENTY-SIXTH AMENDMENT
See Web site for Thirteenth Amendment.

29. 1978: REGENTS OF THE U. OF CALIFORNIA V. BAKKE
http://www.findlaw.com/ Then go to "Supreme Court Opinions." Scroll down to "Party Name Search." Type in name of case.

30. REFUGEE ACT OF 1980
http://www.fairus.org/03202603.htm

31. 1991: AMERICANS WITH DISABILITIES ACT
http://www.usdoj.gov/crt/ada/
http://janweb.icdi.wvu.edu/kinder/

Student Handout 2

Evaluation of a Web Site

Critical reading and evaluation of resources has always been important. With millions of resources now available through the Internet, critiquing sources and their credibility becomes increasingly important.

Complete an evaluation form for each Web site you visit.

Web page address:

1. What's on the page and who provided the information?
2. With what organization is the author of the page affiliated?
3. Does the title of the page provide clues to its contents?
4. Does the page include a paragraph that summarizes the content?
5. Does the page provide information that is useful for your project?
6. Would an encyclopedia provide the same amount of or more information? Explain.
7. Is the information on the page current? historical?
8. Do you need to have up-to-date information for your report? Does the page provide that information?
9. Do any pictures on the pages supplement the content? Explain.
10. Does the page include links to other good sources of information?
11. Does the author of the page present information in an objective form? a subjective form? Explain.
12. Do you agree with the information on the page? Is there some information that you think is incorrect? Explain.
13. Does the information contradict information that you have found elsewhere? Explain.
14. Does the author provide biographical information about himself or herself?
15. Do you think the author is knowledgeable about the topic? Why or why not?
16. Do you think the information provided is true and correct? What can you do to verify the information given?

Adapted from Kathy Schrock's Guide for Educators: *http://www.capecod.net.schrockguide*

Teaching Strategy

Restricting Youth Access to Indecency on the Internet

Margaret E. Fisher

Update on Law-Related Education, 22.2, 1998, pp. 41–45. © 1998 American Bar Association.

Background

This strategy focuses students' attention on the 1997 U.S. Supreme Court decision that the Communications Decency Act of 1996 violated the First Amendment right to free speech. Students might explore the issue further after this lesson by reading the articles on pages 8 and 16.

Objectives

As result of this lesson, students will

- Identify First Amendment protections as they relate to communications over the Internet
- Define requirements necessary to restrict speech on the basis of the content of the speech
- Identify how overbroad restrictions on free speech limit protected speech
- Identify how vague laws restricting speech chill the free exercise of speech
- Analyze conflict between governmental interest in protecting youth from indecent materials and individuals' interest in free speech in the Supreme Court decision *Reno v. ACLU*
- Develop their own viewpoint about the correctness of the Supreme Court decision

Margaret E. Fisher is an attorney with 21 years' experience in educating the public in the law. She lives in Seattle, Washington.

Target Group: Secondary
Time Needed: 1–2 classes
Materials Needed: Student Handout 1 (one per student), Student Handout 2 (one per group)

Procedures

1. To present an overview of the Internet, brainstorm with students the various components of the Internet. The list should at a minimum include electronic mail (E-mail), automatic mailing list services (list servs), newsgroups, chat rooms, and the World Wide Web. If necessary, define basic Internet components. Note, too, that new components are developing regularly.
   - E-mail allows someone to send an electronic message to another person or to a group of persons. Recipients of the messages retrieve their mail from their own computers.
   - Newsgroups are organized around specific topics. Individuals join the newsgroup and then are able to exchange information and opinions about the topic.
   - Individuals wishing to communicate directly with each other may enter a chat room and then type messages to one another. The sender's messages appear almost immediately on the recipient's computer.
   - The World Wide Web is the best-known component of the Internet. People can search and access information stored in computers all around the world.
2. Ask students which of these components they have ever used. This will provide a sense of the scope and widespread use of the Internet. About 40 million people used the Internet as of 1997, and that number is expected to reach 200 million by 1999.
3. Explain that text, pictures, videos, and discussions of sexually explicit materials exist on the Internet and are posted in the same way as nonsexual materials. Also point out to students that Congress enacted its first piece of legislation regulating the Internet in 1996, when it criminalized the sending and displaying to minors of indecent and patently offensive materials. Tell students they will be doing a case study that focuses on whether this federal statute violates the right to free speech.
4. Distribute Handout 1, and ask students to read only the facts on the handout, not Opinions A and B. Brainstorm the important facts with students and write them on

See the articles on pages 8 and 16 for background information.

the board. Once the facts are clear, instruct students to read Opinions A and B.

5. Ask students whether they personally agree with Opinion A or Opinion B. Organize the class into groups of up to five students according to the opinion they agree with. In the event that all students support the same opinion, assign each group to one opinion or the other.
6. After students have discussed the opinions, ask each group to assign a recorder to write down the arguments and a reporter to present the arguments to the class. Then distribute Handout 2 to each group, and have the groups complete the handout by identifying the arguments cited in the opinion, adding their own, and ranking all arguments from most important to least important.
7. Allow a debate of the case by having one student from each group report on the group's most important argument. Allow students to add new arguments as the debate proceeds. As students present their arguments, you should keep track of the arguments made.
8. Debrief the discussion with students once their arguments have been exhausted by identifying the arguments made and responding to them as the Supreme Court did. Let students know that Opinion A includes arguments made from the government's brief and the dissenting opinion in *Reno v. ACLU*, 117 S. Ct. 2329 (1997). Opinion B is the majority opinion of the Supreme Court.
9. Clarify with students the tests the courts use to determine when restrictions based on the content of speech are imposed by the government. Make sure students understand that the government can limit this speech on the basis of its content only when the government has a compelling state interest in limiting speech and its efforts are narrowly drawn to address that problem. Statutes that restrict unprotected speech along with constitutionally protected speech are overbroad and can be struck down for that reason. Statutes that make it a crime to speak must be very specific and clear about what speech is criminal and what is not. Otherwise, the statute can be struck down as vague.
10. Ask students whether or not "indecency" is a problem on the Internet and what steps they might take if they believe that it is a problem.
11. As an extension activity, students might draft a piece of legislation relating to the Internet, taking into account the concerns expressed by the Supreme Court in striking the 1996 statute down.

2000: Lawyers Love the Bug

Computers that will be a day late and a dollar short when the millennium bug strikes as the date changes to the year 2000 are giving corporate executives migraine headaches while making lawyers' mouths water. Atlanta attorney Evelyn Ashley, for one, calls it "the bug that finally provides lawyers the opportunity to rule the world."

The problem or opportunity will arise when most of the nation's business computers, which identify the year with only two digits rather than four, read the change to "00" as 1900 instead of 2000. This will cause some programs to crash and others to make incorrect calculations in a reverse back-to-the-future. How, for example, can a computer calculate the interest on a loan taken out in 1999 if it assumes the following year is 1900?

Assembly lines could grind to a halt; credit cards may not scan (suits have already been filed against a supermarket chain in Michigan that has computer-operated cash registers alleged not to be able to handle credit cards with a 2000 expiration date). The hit list could include malfunctioning traffic lights, heating and air conditioning systems, elevators, bank vaults, and hospital instruments—any or all of which could give rise to litigation.

Experts have already estimated the legal costs of the bug to be in excess of $1 trillion, substantially higher than the $300 billion to $600 billion that it should cost to actually fix the glitch. The legal fees would, if they live up to expectations, exceed those charged for asbestos, breast implants, tobacco, and Superfund environmental litigation combined.

Adapted from Austin American-Statesman, *August 5, 1998, p. A2.*

Student Handout 1

Unmarked Opinion Case Study

The Facts

Congress passed the Communications Decency Act of 1996 to limit minors' access to indecent and obscene transmissions and patently offensive displays on the Internet. This ban applies to commercial and noncommercial groups and individuals using any of the components of the Internet: E-mail, list servs, newsgroups, chat rooms, and the World Wide Web.

This statute makes it a felony for anyone to

1. knowingly use a telecommunications device to transmit obscene or indecent messages to anyone under 18 years of age, or
2. use an interactive computer service to knowingly send or display sexual or excretory activities or organs in patently offensive ways to anyone under 18 years of age. Patently offensive communication is measured against contemporary community standards.

People charged under this law could claim one of two defenses: (1) they had used good faith, reasonable, effective, and appropriate actions to prevent minors from getting access to the indecent material; or (2) the operator required verified proof of age, for example, a credit card or other adult access number.

On the day that President Clinton signed the bill into law, the ACLU, along with other users and providers, filed a lawsuit claiming the law violated the First Amendment right to free speech.

A special three-judge District Court ruled that the statute violated the right to free speech. The Government appealed the decision of the District Court to the U.S. Supreme Court.

Opinion A

The Communications Decency Act is plainly constitutional. The Internet offers a forum for true diversity of political discourse and unique opportunities for cultural development. However, the same technology that makes all these wonderful resources available by the click of a mouse also allows the worst, most vile, and most perverse pornography. Without some basic rules, the increasing use of the Internet will allow easy accessibility to sexual material that would harm children.

Children are increasingly becoming the computer experts in American families. Many parents refuse to hook up to the Internet in order to protect their families.

Congress took steps to protect children by enacting the Communications Decency Act. Clearly the government has a compelling interest in protecting minors from at least some sexually explicit material. Additionally, the government has a compelling state interest in having parents and children using what has become an unparalleled resource for communicating and obtaining information.

The statute is not vague. The restrictions give sufficient warning concerning the core of what they prohibit. No part of the statute is directed at keeping indecent or patently offensive material away from adults who have a First Amendment right to obtain this speech. The undeniable purpose of this law is to segregate indecent material on the Internet into certain areas that minors cannot access.

Technology exists to require Internet users to enter information about themselves, such as an

Student Handout 1 *(continued)*

adult identification number or a credit card number before they can access certain areas of the Internet.

The criminalization of transmitting obscene or indecent material to a user under the age of 18 is not overbroad. The statute indicated that the transmission to a minor must be made knowingly; that is, the person transmitting the information must know that the recipient is under 18 years old.

Likewise, the criminalization of the display of patently offensive material in a manner available to persons under 18 is not overbroad because the defenses to prosecution allow the defendant to use a credit card or adult identification number or some other effective steps to prevent children from accessing the prohibited material. The claim that there is no practical way for providers to verify age fails since content providers may use adult verification services, such as AdultCheck, which costs a nominal fee of less than $10 per year.

Finally, Congress made the judgment that it is better to place the burdens and costs on those who disseminate or display patently offensive material than to leave children wholly unprotected. The law is constitutional.

Opinion B

The Communications Decency Act is clearly unconstitutional. The Act's indecent transmission and patently offensive display provisions violate freedom of speech protected by the First Amendment. This law differs from other cases in which the Supreme Court has upheld restrictions on minors' access to certain material.

Unlike those cases, this law does not give parents the ability to consent to their children's use of restricted materials, it is not limited to commercial transactions, it fails to define *indecent*, and it does not require that patently offensive material lack socially redeeming value. It does not limit its broad prohibitions to particular times or base them on an evaluation by a governmental agency familiar with the Internet's unique characteristics. It is punitive and it applies to a medium that, unlike radio, receives full First Amendment protection.

The lack of definitions for *indecent* and *patently offensive* will make speakers uncertain how the terms relate to each other and just what they mean. A mistake in interpretation can result in a felony conviction. This vagueness chills the exercise of free speech and makes it unlikely that the law has been carefully tailored to protecting minors from potentially harmful materials.

In its attempt to regulate speech that is potentially harmful to children, the law suppresses a large amount of speech that adults have a constitutional right to send and receive. Because there are less restrictive ways to protect children from harmful materials than this overbroad suppression of adult speech, the statute is unconstitutional. Currently available software allows a reasonably effective way for parents to prevent their children from accessing that which the parents believe is inappropriate.

The defenses provided in the statute are not narrowly tailored. The defense requires that the operators effectively block indecent materials. To date, there is no screening software that exists to do this. But even if it did exist, there is no way of knowing whether a minor might actually use the blocking software. The age verification defense also fails to pass constitutional scrutiny because it is not economically feasible for most noncommercial speakers.

The law is struck down as unconstitutional.

Student Handout 2

Review the Arguments

1. Identify all the arguments from the opinion with which you agree.

2. Add any additional arguments that your group can think of.

3. Rank all the arguments from most important to least important.

4. Identify a spokesperson from your group to report back to the class.

Teaching Strategy

Analyzing Copyright in the Technology World

Sheryl Hinman

Update on Law-Related Education, 22.2, 1998, pp. 46–50. © 1998 American Bar Association.

Background

As more and more students use the Internet as a research tool, questions about the ownership of the materials, copyright laws, and fair use arise. In this lesson, students investigate how copyright laws apply to the Internet. If your school does not have a written policy on copyright, you may wish to download and produce copies of the Bellingham (Washington) School District policy, which is linked to the "Copyright in the Cyber Age" site.

Objectives

As a result of this lesson, students will

- Discuss the various points of view concerning copyright as it relates to cyber technology
- Apply standards of copyright to analyzing Web sites
- Develop guidelines for educational projects

Target Group: Secondary
Time Needed: 1–2 classes
Materials Needed: highlighter pens, the article "Copyright in the Cyber Age" located at http://www.electronic-school.com/0698f5.html (one per student), your school or school district policy on copyright, Student Handouts 1 and 2

Sheryl Hinman has taught journalism and English in Galesburg, Illinois, for 29 years. She coached a team that won international honors through the ThinkQuest educational Web site competition and authored numerous books of English curriculum units.

Procedures

1. Before beginning the lesson, print a classroom set of the article "Copyright in the Cyber Age" by Lawrence Hardy (http://www.electronic-school.com/0698f5.html). Be sure the article contains the copyright statement at the end for later use in class. Make sure all students have a highlighter for use on the article.
2. Divide the class into two groups. One group will represent computer technology creators and the other group will represent educators. Read the introduction of the article aloud. As students read the section subtitled "Changing Times," direct them to highlight the arguments that support the concerns and interests of the group they represent. Students should use both the article and the accompanying sidebar, "Congress Debates 'Fair Use,'" to locate evidence. Ask students to share examples of what they feel is the best supporting material related to their assigned group. Students may want to share their own perspective as creators of Web sites or programs as well.
3. As the class finishes commenting about the examples, discuss the section subtitled "What the Law Says." It mentions that various groups are still trying to define copyright terms like the fair use doctrine. Some publications set their own limits. You can point out that the statement at the end of the Hardy article allows educators to reproduce fewer than 100 copies of the article for classroom use. Other publications request a notification policy. For example, the Student Press Law Center (http://www.splc.org) has many excellent sections on copyright and publication-related law. Two of the best are located at these addresses: http://www.splc.org/resources/copyright.html and http://www.splc.org/resources/QUESTIONS/high.school.html Those two articles can be duplicated for the classroom if teachers make a request for use via phone, U.S. mail, or E-mail. (More about the Student Press Law Center has been included in the "A Tale of Three Sites" handout.) When the publisher of an article can't be reached easily, the 10 percent standard should be followed.
4. Distribute Handout 1 to students and review the directions. The activity may be completed individually or with a partner. Ask students to collect specific examples of copyright violations to

See the article on page 4 for background information.

share with the class as a whole. As students discuss their findings, you may want to ask whether any of the sites provide information that might be objectionable to the celebrity. Shortly after the death of Princess Diana, for example, various companies began producing plates, jewelry, dolls, and other commemorative trinkets. Her estate has recently sought to prevent the sale of unauthorized material reproducing her image. Representatives decried the "tacky" nature of some of the offerings. They were also concerned because some of the companies advertised that a percentage of the profits would go to the princess's charities when, in fact, little or no money was being given to those organizations. It is possible that a celebrity site offering fan-oriented items for sale may be using copyrighted symbols or characters in inappropriate ways.

5. Follow up the discussion of the violations students located by examining the policies that have been spelled out for your school district. Does the policy clearly spell out the steps to follow? Are there additions or revisions that they would suggest? You may want to contrast the policy your district has with the detailed procedures posted by the Bellingham School District.
6. Distribute Handout 2, which provides the article "A Tale of Three Sites" concerning the way one high school has been working to maintain appropriate standards for student-produced Internet sites. If time permits, you may want to visit one of those sites or other student-generated examples from ThinkQuest (http://www.thinkquest.org). Ask students to note the way designers have incorporated information about the creators of the site material. Students could print samples of pages on which the sites have acknowledged resources. These can be posted on a bulletin board for use as role models.
7. Conclude the activity by asking students to summarize the importance of respecting copyright laws when referencing or creating materials for the Internet.

Teen Courts

See This Web Site

Teen Court, the highly effective, award-winning program for first-time juvenile offenders is available at

http://library.advanced.org.

Law School Daze

One of a student's options in life is to attend a law school. According to Andrew J. McClurg, a professor at the University of Arkansas, Little Rock School of Law, there are two principal factors in the attainment of a high ranking among law schools: (1) being Harvard, or (2) having a really good catalog. McClurg said that most law schools include an academic calendar but make the mistake of emphasizing negatives such as tuition due dates and exam periods. He suggested that law schools would gain ground on the more elite universities by fashioning a calendar that appeals to young applicants, for example:

- **Monday:** Sleep in late, Contracts, Rest period, Lunch, Naptime, Mud Wrestling, Slumber Party at Dean's.
- **Tuesday:** Civil Procedure Coffee and Danish Drop-In, Jerry Springerism Alternative Dispute Resolution (prerequisite: proof of insurance), Lunch, Criminal Law Lecture Series—The Defense of Mental Incapacity (at Vino's Bar).
- **Wednesday Through Friday:** Torts Snowboarding Trip and Review Session.
- **Saturday:** Casebook Recycling Day to benefit the Environmental Law Club.
- **Sunday:** Student-Faculty Boxing.

Adapted from ABA Journal, *August 1998, p. 20.*

Student Handout 1

Celebrity Site Search

Directions Celebrities are concerned about their public image and their intellectual property. You are part of a team of people hired by the celebrity listed below to review Web sites related to the person. You will be checking for copyright violations. Several points need to be examined.

• **CREDIT** Does the site identify the creator of the work? Do photos and artwork have credit lines? Is there a bibliography or resource list? While merely citing a source does not give the author permission to reproduce the work, the resource list can identify possible violations. The National Archives, for example, holds many photos that are part of the public domain. A photo of Franklin Roosevelt taken from that location would probably be suitable. However, a photo scanned from a national magazine may not be copyright free.

• **FAIR USE** If the site contains lyrics, poetry, art, or other copyrighted material, is more than 10 percent of the original displayed? What is the effect of the use of this material? Could it be used as a substitute for the original?

• **ORIGINAL** Does this site contain work that has been created by the site's author? For example, one devoted fan developed a page sharing his step-by-step procedures for creating a papier-mâché Elvis statue. The concepts and photographs were entirely his own work and, therefore, free of a need to seek permission from others.

Record your evaluation below.

Celebrity: _____

Site address: http:// _____

Summary of contents:

_____

_____

Possible violations of copyright:

_____

_____

_____

Student Handout 2

A Tale of Three Sites

During the 1995–1996 school year, my students decided to enter ThinkQuest, an international competition for educational Web sites created by student teams. The process has been so academically rewarding that teams have entered during the last three competitions. In each of those years, we have had to resolve many issues dealing with copyright.

1995–96

TEEN COURT

http://library.advanced.org/2640

This Web site contains all the legal documents needed to start this highly effective program for first-time juvenile offenders. The manuals used by the judges and the students had all been created by local board members with the aid of attorneys. The students wanted permission to reproduce all of the items, so we appeared at the board meeting to describe the potential value of the Web site.

This was challenging since only one board member had ever been on the Internet at that period of time. We needed to help the board members understand the impact of placing material on a site that might be accessed by thousands of people. The students took photos, videos, and audiotapes of the mock trials. In each instance, they received written permission from the students and parents for the use of their voices and images.

1996–97

COLONIZING MARS

http://library.advanced.org/10274

This Web site contains original material related to colonizing the planet Mars. The students researched facts about colonization and created dwellings, paper-doll crew members, original music, and many activities. The students contacted NASA to request permission to use some visual material. Shortly after the publication of the site, the student designers were surprised to find that one of the drawings from their site had been used by a professional site. It was exactly the size of the original that they had scanned and placed on their page. As coach of the team, I E-mailed the owner of the business and identified the work as the product of a student that I had supervised. I knew the work was hers because we had consulted on the concept and the colors over a period of several weeks. We asked that the professional site acknowledge her work and provide a link to the student-created Mars site. Within a day her work had been removed from their site. No response to our E-mail was ever received.

1997–98

WORLD WAR II: THE HOME FRONT

http://library.advanced.org/11551

This Web site included photos of artifacts from the period as well as a simulation of events during the 1943–44 school year. A group of elementary school children collected items from grandparents and wrote captions about the reasons these World War II era objects had been kept. The Web team secured permission to use the students' photos and captions. Only the first names of the students were used on the site to protect their privacy. The lesson plan for the unit came from the instructor, and they received written permission to use it from her.

One of the toughest decisions about the Web site concerned the use of objects such as sheet music and postcards. In most cases, the companies were no longer in business. We wondered if it was possible to use small images of the items in the artifact section. The team resolved the issue by contacting the Student Press Law Center (http://www.splc.org). The center's legal staff provides free information to student journalists, their advisers, and their attorneys. Help is available in the areas of censorship, libel, and copyright law, as well as the freedom of information law.

A phone call resulted in a response that was returned within 24 hours. We learned that the students could place small size examples on the Web site since they would be using the items in an educational display including commentary. The use of small examples would not prevent the purchase of the items.

To ask a legal question by telephone, call (703) 807-1904 between 9 A.M. and 6 P.M. Eastern Standard Time, Monday through Friday. E-mail requests can be sent to splc@aplc.org, and snail mail should be sent to Student Press Law Center, 1101 Wilson Boulevard, Suite 1910, Arlington, VA 22209-2248. Include your telephone number and return address with any written communication.

ThinkQuest competition (http://www.thinkquest.org) has enabled my teams to experience the challenge of publishing responsible, high-quality educational material. You may want to visit their Web site for examples of student work that follows rigorous standards of academic competition.

Student Forum

Can We Protect Children and the First Amendment?

Gayle Mertz

Update on Law-Related Education, 22.2, 1998, pp. 51–54. © 1998 American Bar Association.

A Note to Teachers: This forum is a student-organized open discussion. Your role is to provide copies of materials to the students and to serve as a consultant. The topic of this forum addresses complex and controversial legal and social issues. Before embarking on this discussion of censorship as it relates to pornography, obscenity, and/or indecency, you will have to determine whether (or to what extent) you will impose any standard of censorship upon discussion. Even the most legitimate and scholarly articles and court decisions addressing these topics include graphic examples and descriptions of pornography, obscenity, and indecency. Thus, this forum is more than an intellectual debate. It serves as a microcosm of a controversy that is being debated internationally.

To the Student

This forum will give you an opportunity to take responsibility for your own learning. The activity will help you explore other people's views and examine your own. You are being asked to analyze and interpret the meaning of a segment of the most cherished and fundamental law of this nation—the First Amendment of the Bill of Rights.

Unlike many issues that have little direct impact on your day-to-day life, Internet censorship speaks directly to the rights and protection of people your age and younger. Cyberspace now provides easy access to material that would not be appropriate for classroom use. Yet, you will be discussing such material. Just as researchers, legislators, and jurists must struggle to maintain civility while discussing material that they often consider obscene or offensive, you will be called upon to exhibit maturity and responsibility when describing the scope of what is available on the Net.

Gayle Mertz is the director of the Law-Related Education Network in Boulder, Colorado. Ms. Mertz serves on the ABA Advisory Committee on Youth Education for Citizenship and the Update on Law-Related Education *Editorial Advisory Board.*

How to Conduct the Forum

1. The class selects five students to serve on the panel.
2. All students complete the forum ballot and submit it to the panel.
3. Students form groups to develop or adapt forum character roles. This is a good time to discuss how you will introduce information about indecent or obscene material without violating school or classroom rules about obscenity, unduly embarrassing other students, or censoring yourself to the point that you cannot fully and reasonably participate in this forum.
4. Students identify community members to invite to participate in the debate or serve as resources to panelists or speakers addressing the panel. Include your teacher in making plans to invite guest speakers. Students read the article, "Technology, Free Expression, and the Law," on pages 4–7 and conduct independent research to prepare presentations.
5. Panel members select a facilitator, a clerk, and students to role-play sample roles and/or create new roles.
6. The clerk schedules the presentations of the characters and guest speakers. He or she might also keep minutes of the meeting.
7. The facilitator opens the forum with a statement explaining the topic of discussion. She or he is responsible for ensuring that speakers have equal time to present their positions (five minutes each) and maintaining order if necessary.
8. The panel conducts the forum. Each character presents his or her viewpoint and makes recommendations. Panelists may be questioned by the audience and should answer consistently with the role they are playing.
9. All students should once again complete a forum ballot. Panel

members should then review and summarize ballot results and report their opinion changes to the class.

Background

The use of the Internet has grown faster than any other communication tool in history. With lightning speed you can find out (in real time) what is happening in Congress or at the stock market, find a recipe, play an action-packed game, buy clothing or groceries, chat with someone halfway across the world, or view pornography. One of the many issues raised by the easy access to the Net is whether the U.S. government should or could restrict the communication of indecent material that can be accessed by children. Simply put, there are two opposing views on this issue. First, protectors of the First Amendment claim that any such restrictions would violate the fundamental American right to send and receive information. Many people, however, argue that measures designed to protect children should not be considered a threat to our constitutional rights.

Introduction

Roles The following roles are for individuals who have agreed to discuss their views and positions in a panel discussion. They represent the interests of various individuals who are involved in debate about student use of the Internet. Students playing the roles should have five minutes to present their positions and to answer questions from the audience. Students in the audience may play the roles of reporters covering the discussion and residents of the community.

Role 1: Ernesto Martinez Good evening. I'm Ernesto Martinez, the principal of Coleman School, one of the largest elementary schools in our urban community. Most of our students do not have computers at home. I'm eager to teach all Coleman students how to use the Internet. Its use can help them with their schoolwork and prepare them for the future job market. Together with the school board, we have successfully funded the placement of computers with Internet links in every classroom for student use. We plan to use the computers to teach students how to access and evaluate information on the Internet. Some of our students' parents, however, think that the "Net" is dangerous and perhaps even evil. They argue that viewing material that is available on the Net violates their religious beliefs and they fear that their children could be lured into dangerous situations through chat groups. A small group of parents have insisted that their children not be allowed to use the Internet at all. I support putting a device on all computers that would block any material objectionable to these parents, but I believe it is essential that all students learn to access and evaluate materials on the Internet. With the screening device in place, all children should be able to learn how to use the Internet with little or no chance of encountering objectionable materials. I urge parents to remember that teachers are always present when students are using the computers for Internet use.

Role 2: Stanley Gardner Hello, I'm Stanley Gardner, a member of the Free Speech Association and the father of two young children. I understand the need to protect children from viewing material that they are not mature enough to understand, but I'm not willing to compromise the First Amendment to protect children from unsuitable material. I believe that it is impossible to censor anything on the Net without putting all communication at risk. Need I remind you of the time that a private company developed software to restrict access to sites with certain words in their title? The software restricted access to Web sites with the word *breast* in it, and a support group for women with breast cancer could no longer communicate with one another. Similar mistakes have interfered with the legitimate rights of people to communicate about topics that have nothing to do with pornography. It is essential that I as a parent and educators monitor Internet use so that our children do not access inappropriate materials. This can be done without censoring the Internet materials for everyone.

Role 3: Kim Yang Hi, my name is Kim Yang, and I'm a student at Ancil-

la Middle School. I like to meet new people through chat groups on the Net. I have chatted with girls and boys my own age in nearby towns and as far away as Israel and China. Last year I had a really frightening experience. I started to chat regularly with someone from the next town who said that "she" was a 13-year-old girl named Erin Taburn. When my new friend suggested that we go to a movie together, I eagerly agreed to meet her on a Saturday afternoon. My "new friend" turned out to be a 20-year-old man who tried to force me to go to his house. I was terrified and managed to get away. I never told my parents about the incident because I thought they would not let me use the chat rooms on the Internet again. Now I'm more careful, but I think the police should investigate whether people are really telling the truth when they communicate through chat groups.

Role 4: Kent Williams My friends, as you know, I'm Kent Williams, your representative in the U.S. Congress. In 1996 I voted for the passage of the Communications Decency Act. The Act made it a crime to transmit obscene or indecent communications to a recipient known by the sender to be a minor. Under the law, Internet publishers could not be held liable if they took "good faith, reasonable, and appropriate actions" to prevent minors from receiving unlawful communications. I was pleased when the law passed because it would help protect our children including my own three youngsters. I was very disappointed when the U.S. Supreme Court ruled the law unconstitutional. The Court wrote that the language of the law was vague and that it could have a "chilling effect" on the exercise of First Amendment rights. Because of my conviction to keep pornography off the Net, I voted against releasing the Starr report, which detailed President Clinton's inappropriate relationship with a White House intern. And I'm here tonight to vow that I will introduce a new and stronger bill that would make it a felony to put anything on the Net that would be considered lewd.

Role 5: Julie Roosevelt Hello. I'm Julie Roosevelt, a sociology professor at the state university. My colleagues and I have just completed an extensive study of pornography on the Net. Our report makes it clear that if someone wants to, he or she can find every kind of pornography imaginable on the Net. Our research also proves that pornographic image files represent only about 3 percent of all the messages on Usenet newsgroups, and the Usenet itself represents only 11.5 percent of the traffic on the Internet. I admit that much of the material that I have found on the Internet can be considered obscene, but I have not found anything that I could not find in adult bookstores. In fact, most of the obscene material on the Net is simply scanned from magazines. I believe that parents must take responsibility for what their children access on the Net, just as they should restrict which movies their children go to or which books they read. It is not the responsibility of the government to monitor the Internet.

Role 6: Jeffrey Schmidt Hello, I'm Jeffrey Schmidt from the Federal Communications Commission (FCC). Part of my job is to investigate complaints about the Internet. Right now, I am trying to locate a person who is putting pictures of nude children on a Web site. Because there is no requirement for people to identify themselves when they put something on the Internet, my job of tracking the source of the pictures is extremely difficult. Unlike the print media and television or radio stations that have fixed locations, Internet communication can come from anywhere. In fact, 40 percent of the pornography on the Net is sent from outside the United States. I'm presently in the process of writing a report to my superiors. It states that at this time it is impossible to apply FCC regulations to Internet use.

Answers to Page 63

1. chat room
2. AOL
3. Fourth Amendment
4. E-mail
5. slamming
6. minor
7. Internet
8. filter
9. newsgroup
10. hyperlink

Forum Ballot

Is it possible to protect children from viewing indecency and obscenity on the Internet while maintaining the integrity of the First Amendment?

Circle the choice that best answers how you feel about the right to communicate free of government interference or censorship and the right of parents and government officials to protect children from pornography on the Internet.

	strongly agree				strongly disagree
1. As long as pornography can be accessed on the Internet, K–9 schools should not have Internet access on their computers.	1	2	3	4	5
2. As long as pornography can be accessed on the Internet, K–12 schools should not have Internet access on their computers.	1	2	3	4	5
3. Any student accessing lewd or indecent material should be disciplined.	1	2	3	4	5
4. Students who are caught accessing pornography on a school computer should be expelled.	1	2	3	4	5
5. If parents choose to send their children to public schools, they should respect the judgment of professional educators and not interfere with the educational process.	1	2	3	4	5
6. If a parent is negligent and allows his or her minor child to access pornography on a home computer, the parent should be reported to the police or a social service agency to be investigated for child abuse. If found guilty, he or she should lose custody of the child.	1	2	3	4	5
7. Congress should put free-trade sanctions on countries that allow pornography to be transmitted to the United States.	1	2	3	4	5
8. Congress should pass a resolution stating its firm support of the First Amendment and opposing any government efforts to censor material on the Internet.	1	2	3	4	5
9. The U.S. Department of Education should provide funding to all public schools to hire people to monitor student access on the Internet.	1	2	3	4	5
10. Schools should use pornography and material considered indecent as a tool to teach about values and morality.	1	2	3	4	5
11. Students should be able to access any material they want to on school computers if they have written permission from their parents.	1	2	3	4	5
12. Because there is no way to define *decency* or *indecency* that everyone would agree on, no laws should be passed that restrict any material from transmission on the Internet.	1	2	3	4	5
13. People use the Internet to lure young, innocent children into dangerous situations. This justifies censorship.	1	2	3	4	5

Write a short answer. If I were a member of Congress, I would propose the following law to address issues related to pornography on the Internet and its potential effect on children.

Teaching Strategy

Using the Internet Poster

Update on Law-Related Education, 22.2, 1998, pp. 55–56. © 1998 American Bar Association.

Background

In Roman mythology, Mercury was the god of travel and communications. Mercury's winged sandals made it possible for him to deliver messages in remarkable time. Today the Internet is able to transmit messages every bit as quickly as Mercury. The Internet has made it possible to communicate worldwide and has opened discussions on privacy, copyright, and freedom of expression issues as they pertain to the Internet.

Objectives

As a result of this lesson, students will

- Identify the First Amendment right of free expression, the Fourth Amendment right of privacy, and copyright
- Describe forms of communication available over the Internet
- Evaluate uses of the Internet

Target Group: Secondary
Time needed: 2–3 classes
Materials Needed: Student Handout
Resource Persons: Legal expert, technology expert

Procedures

1. Display the poster and ask a volunteer to read the copy. Discuss the symbolization on the poster, providing background information, if necessary. Point out that the poster depicts Mercury, the Roman god of communications, using the Internet magnifying glass to closely examine the Internet globe, which is emblazoned with the term *law*. Ask why Mercury might be shown on the poster, and compare the Internet to Mercury. (Both can deliver messages at remarkable speeds.)
2. Briefly review the First Amendment right of free speech, the Fourth Amendment right to privacy, and copyright law rights to ownership for students. Brainstorm with students ways that individuals and organizations can communicate over the Internet, for example, through E-mail, chat rooms, newsgroups, and visits to Web sites. If possible, demonstrate each form of communication on the Internet.
3. Divide the class into three groups, and ask each group to prepare a set of questions to be sent to the experts before they visit the class for a panel discussion. One group should write questions addressing privacy issues and their application to the Internet, another group should write questions about free expression rights and their application to the Internet, and the final group should pose questions about copyright laws and their application to the Internet.
4. Invite legal and technology experts to discuss the Internet issues with your class. Send the questions to the experts and ask them to cooperate in preparing presentations based on the questions. They can discuss legal issues related to the Internet and the benefits and drawbacks of communication and information access through the Internet, provide examples of ways in which legal rights could be upheld and violated, and identify which online forms of communication offer the least and the greatest amount of privacy and why.
5. Following the discussion by the experts, distribute copies of the Student Handout. Read through the scenarios with students and ask them to identify which rights are involved in the scenarios—freedom of expression, right of privacy, and/or copyright. Ask them to tell whether they think the rights have been violated and why.
6. Review students' answers, and ask the resource persons to address any misconceptions students may have.
7. Conclude the lesson by asking students to summarize the lesson in a paragraph and to draw conclusions about how the discussion may have affected their understanding of the law and the use of the Internet.

See the article on page 4 for background information.

If you love the law and you love good sausage, don't watch either being made.
—Betty Talmadge

Student Handout

Rights and Internet Use

Read each scenario. Identify the right or rights involved in each one. Tell whether you think the right has been upheld or violated and explain your answer.

1. Erin was writing a college research paper on Dr. Martin Luther King Jr.'s "I Have a Dream" speech. She decided to use the Internet as a resource tool and visited a site that provided a detailed analysis of the speech as well as included the speech in its entirety. Erin downloaded the information and paraphrased some of the analysis in her own report. She footnoted her paraphrase and cited the Web site in her bibliography.

   right of free expression right of privacy copyright

   _____

   _____

   _____

2. Daniel was one of the subjects undergoing treatment with an experimental drug. Before beginning treatment, he signed a document that gave his doctor the right to publish the results of the treatment. The doctor wrote an article about the treatment and made it available over the Internet. The doctor did not identify any specific patient by name, but Daniel recognized himself as Patient B. He was afraid other people would, too.

   right of free expression right of privacy copyright

   _____

   _____

   _____

3. About ten years ago, Karey Terella was charged with a minor crime but found "not guilty." The lawyer who defended her has since volunteered to teach civic classes involving the criminal justice system at a local high school. As part of the curriculum, he developed case studies that he made available to students over the Internet. Karey's daughter was a student in the class and recently visited the lawyer's Web site. When Karey saw the case her daughter had downloaded, she was surprised to see that it was her case, which was discussed in depth and included information that she had revealed only to her lawyer. Although Karey's full name had not been used by the lawyer, he did identify the defendant as Karey T.

   right of free expression right of privacy copyright

   _____

   _____

   _____

Resources for Teaching

Citizenship Education Resources on the World Wide Web

Robert W. Wood

Update on Law-Related Education, 22.2, 1998, pp. 57–61. © 1998 American Bar Association.

LRE, Civic Education, and the WWW

The World Wide Web (WWW) resources on the topics of law-related education (LRE) and civic education are varied and extensive and range from poor to outstanding. The key to using the resources on the WWW is to carefully review each Web site and its various associated links and to determine if the site is worthy of being used and entered as a Benchmark. The individuals creating the Web sites believe they are providing a service to the Internet community; however, only you, the WWW consumer, can determine that. There is no validation standard for Web pages, so the user must somehow independently determine if the information is valid.

In browsing the WWW for LRE Web sites, you can find a number of related topics. Most state bar associations now have Web sites with appropriate information. The White House, the U.S. House of Representatives, and the U.S. Senate have their own Web sites. Organizations such as the Center for Civic Education and Street Law, Inc., also have Web sites. Web site information about the American Bar Association Division for Public Education will be identified shortly.

Web sites are available for topics dealing with the United Nations, teen courts, the U.S. Supreme Court justices, various state law-related education centers, legal resources, prevention of school violence, international resources for civic education, etc. Like any other consumer, you have to shop around, evaluate the product, and determine if you are going to use the Web site information.

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Teachers, students, lawyers, professors, and other interested parties should find the following Web sites interesting, varied, and useful. Several search engines that will assist in locating Web sites relevant to the needs of the individual readers are also listed.

Selected Web Sites

The following selected Web sites will allow you to access a wealth of information regarding LRE and civic education.

Search Engines

http://www.altavista.digital.com
(An especially advanced search engine.)

http://www.yahoo.com/
(One of the most used search engines today.)

http://www.stpt.com/
(Another excellent search engine.)

http://www.excite.com/
(Try this search engine for additional information.)

http://www.albany.net/allinone/
(Check this site out. It has a multitude of search engines.)

http://www.search.com/
(Another search engine that links you to other search engines.)

Social Studies

http://www.ncss.org/home.html
(National Council for the Social Studies Web site.)

http://www.execpc.com/~dboals/boals.html
(A Web site with a vast amount of history/social studies information for K–12 teachers.)

http://www.csun.edu/~vceed009
(Click on the globe and you will get several pages of social studies Web sites and resources.)

http://www.socialstudies.com
(The Web site for the Social Studies School Service. Lots of information is provided dealing with curriculum materials and on-line resources.)

National Government
http://www.fedworld.gov/
(A great Web site to begin your review of government. Numerous links are provided to other government Web sites.)

http://thomas.loc.gov/home/thomas2.html
(One of the best sources of information for general congressional information, as well as bills and federal agencies and departments.)

Congressional Record
http://www.house.gov/
(The Web site for the U.S. House of Representatives. Send your representative an E-mail message.)

http://www.senate.gov/
(The Web site for the U.S. Senate. Lots of good information about the Senate.)

http://www.lib.lsu.edu/gov/fedgov.html
(An extensive list of federal agencies on the Internet is included at this Web site.)

http://www.nara.gov/
(NARA is the government agency responsible for managing the records of the federal government. Lots of documents at this site.)

http://www.usia.gov/
(The Web site for the U.S Information Agency.)

http://ed.gov/
(The Web site for the U.S. Department of Education.)

http://www.si.edu/
(The Electronic Smithsonian makes its resources available to everyone.)

http://www.ed.gov/free
(A one-stop Web site for teaching and learning resources with more than 35 federal agencies listed.)

http://www.loc.gov/
(The Library of Congress on-line systems can be found at this site.)

Law-Related and Civic Education
http://www.abanet.org/publiced
(The Web site for the American Bar Association's Division for Public Education. This is a must site for LRE browsers.)

http://www.civiced.org
(The Center for Civic Education Web site includes curricular frameworks, standards for civic education, and sample lessons, as well as links to other resources.)

http://www.indiana.edu/~ssdc/iplre.html
(The Indiana Program for Law-Related Education Web site contains links to other law-related education Internet resources.)

http://www.streetlaw.org
(This is the Web site for Street Law, Inc.)

http://www.usd.edu/chiesman/
(An excellent Web site for multiple links to LRE sites in the United States and the world.)

http://www.closeup.org/resource.htm
(This Web site is sponsored by the CloseUp Foundation and offers special topic pages and links to other sites.)

http://www.kidsvotingusa.org/
(This site is dedicated to securing democracy for the future by involving youth in the election process today.)

http://crfc.org/
(The Web site for the Constitutional Rights Foundation/Chicago.)

http://crf-usa.org/
(The Web site for the Constitutional Rights Foundation/Los Angeles.)

Global
http://civnet.org/index.html
(An international resource for civic education and civil society Web site. Contains links to other organizations and programs.)

http://www.undp.org
(United Nations information.)

http://www.undcp.org/unlinks.html
(Many United Nations and international organizations and related links are found at this Web site.)

http://www.educ.SFu.ca/cels
(The Law Connection Web site provides up-to-date information about the law. Primarily for teachers and students in British Columbia, Canada.)

http://www.aph.gov.au/
(You will find Australian Parliamentary information at this Web site.)

http://www.igc.org/igc/index.html
(The Institute for Global Communications Web site contains links to many general international resources, organized by continent and country.)

http://www.Parliament.uk/
(The British Parliament Web site.)

http://www.droit.umontreal.ca/CSC.html
(The Web site for the Canadian Supreme Court.)

http://www.bl.uk/gabriel/en/welcome.html
(Use this Web site as a gateway to European national libraries.)

Miscellaneous
http://www.law.cornell.edu/#main_menus
(Lots of legal information and links to other Web sites.)

http://www.law.indiana.edu/law/lawindex.html
(Lots of links to legal resources on this Web site.)

http://www.legal.net/
(A Web site for law firms, legal societies, bar associations, and legal special interest groups.)

http://www.sdbar.org/
(The Web site for the State Bar of South Dakota. Use a search engine to find the Web site for your state Bar Association's Web site. The SD Bar funds the SD Center for Law and Civic Education housed in the School of Education at the University of South Dakota.)

http://www.courttv.com/library/supreme/
(CourtTV Supreme Court cases are on this Web site.)

http://www.courttv.com/teens/
(Go to this Web site for information about how courts work.)

http://tqd.advanced.org/2640
(An excellent teen court Web site. This Web site must be visited if you are interested in starting a teen court.)

http://www.ncjrs.org/ojjhome.html
(If you want to get information about the Office of Juvenile Justice and Delinquency Prevention, this is the Web site for you. Multiple links are provided.)

http://www.ncn.com/~snews
(A Web site by the *Salem News* local and Internet newspaper from Salem, Oregon. A teen court link provides valuable information.)

http://www.libertynet.org/iha/betsy/index.html
(Learn about the U.S. flag at this Web site, and check out the links on a variety of flag topics.)

http://www.uscourts.gov/understanding_courts/899_toc.htm
(Learn about state and federal courts at this Web site. Many valuable links are provided.)

http://www.law.cornell.edu/supct/justices/fullcourt.html
(Find out information about the Supreme Court justices at this Web site.)

http://www.whitehouse.gov/
(The White House Web site.)

http://www.ncjrs.org/
(The National Criminal Justice Reference Service Web site provides a wealth of information on a variety of justice topics.)

http://www.fedworld.gov.supcourt/index.htm
(The Web site for Supreme Court decisions.)

http://supct.law.cornell.edu/supct/#current
(You will find the Court's Calendar and other information at this site.)

ERIC Clearinghouses
ERIC offers a wealth of searchable resources, ranging from educational research to lesson plans, all presented in an easily usable form.

The ERIC Database contains abstracts for a considerable amount of research over the past decade, some of which deals with content or performance standards.

The Clearinghouse on Assessment and Evaluation has a section on Goals and Standards, with links to various federal and ERIC documents about standards. The Clearinghouse also provides access to a wealth of other information (including research and reports) and many related topics.

The K12ASSESS-L Listserv contains an archive of discussions about assessment in general, with many messages dealing with proposed national testing or other testing related to standards and frameworks.

http://www.indiana.edu/~ssdc/eric_chess.htm
(The ERIC Clearinghouse for Social Studies/Social Sciences Education is at this Web site. A law-related education link is available.)

http://ericir.syr.edu/
(AskERIC Web site where you can ask questions and do searches).

Center for Civic Education

The Center for Civic Education has helped develop the National Standards for Civic and Government (with funding from the U.S. Department of Education and the Pew Charitable Trusts) and Civitas: A Framework for Civic Education (with the Council for the Advancement of Citizenship and funding from the Pew Charitable Trusts). Brief descriptions and ordering information for each are available on the center's bookstore page. A Curricular Materials page provides access to an executive summary of Civitas, a complete version of the civics and government standards, and several other curricular resources. Finally, an Articles and papers page has links to at least one article about civics standards.

New One-Stop Web Site for Teaching and Learning Resources

Hundreds of federal resources for teaching and learning can now be found at one Web site, U.S. Secretary of Education Richard W. Riley announced on April 8, 1998.

"This new Web site, Federal Resources for Educational Excellence" (FREE), offers one-stop shopping for a treasure trove of historical documents, scientific experiments, mathematical challenges, famous paintings, and other tools for teachers and students," Riley said.

A search of the Web site produces dozens of resources for teaching and learning from more than 35 federal agencies. Thousands of topics can be searched—the Civil War, the Constitution, photosynthesis, condensation, immigration, Pablo Picasso, Thomas Jefferson, Henry David Thoreau, Mary Cassatt, Jackie Robinson, the Amistad Case, the America Reads Challenge, famous FBI cases, cartography, genealogy, the Renaissance, calculus simulations, "today in history," the human genome project, epidemiology, "the African American odyssey," the solar system, the microbe zoo, and others. Resources can also be viewed in 12 subject areas.

"More than 35 federal agencies have collaborated for nearly a year on this effort," Riley said. "Their work—this Web site—offers a glimpse of how government can use technology to serve citizens in ways barely dreamed of a decade ago."

The FREE site was developed in response to a directive President Clinton issued nearly a year ago. It can help make compelling on-line resources available in every school, which is part of the president's Technology Literacy Challenge. The four goals of this challenge are

- All teachers will be trained to help students learn through computers and the information superhighway;
- All students and teachers will have access to modern computers;
- All schools and classrooms will be linked to the information superhighway; and
- High-quality software and on-line resources will be part of the curriculum in every school.

"FREE is just a first step," Riley said. "And it is more than just another Web site. It is a place where federal agencies and teachers can begin forming partnerships to develop additional high-quality, standards-based resources for teaching and learning." Go to (http://www.ed.gov/free).

On the Internet
Your Guide to Related LRE Sites on the Internet from http://www.streetlaw.org

Law-Related/Civic Education Links

American Bar Association Standing Committee on Public Education for Citizenship
Center for Civic Education
Constitutional Rights Foundation (Chicago)
Constitutional Rights Foundation (Los Angeles)
Phi Alpha Delta Public Service Center
Office of Juvenile Justice and Delinquency Prevention U.S. Department of Justice
National Teens, Crime, and the Community Program

State LRE Projects

Alabama	Missouri
Arizona	New York
Florida	North Carolina
Indiana	Ohio
Kansas	Pennsylvania
Maryland	Utah
Minnesota	Wisconsin
Mississippi	

Other Law-Related/Civic Education Organizations
Alliance for Justice
Chiesman Fund for Civic Education
Civnet (published by CIVITAS)
Close-Up Foundation
National Crime Prevention Council
Human Rights USA
Institute for Agriculture and Trade Policy
Franklin & Eleanor Roosevelt Institute (FERI)
National Endowment for Democracy
National Institute for Dispute Resolution

Other Nonprofits
National Assembly

Education Links

Education Organization
Association for Supervision and Curriculum Development (ASCD)
American Education Research Association (AERA)
National Council for the Social Studies (NCSS)

Education Agencies
U.S. Department of Education

Educational Publications
American Schools Directory
Education Week
National Center for Educational Statistics

For Young People
Department of Justice Kids Page
National Youth Network
Social Studies Links for Kids

Legal and Government Links

U.S. Government
American Memory—Library of Congress
Bureau of the Census
Central Intelligence Agency
Civil Rights Division, U.S. Department of Justice
Community Policing
Department of Health and Human Services Youth Information
Department of Justice
FedStats: One-Stop Shopping for Federal Statistics
Fedworld Information Network
Government Information Sharing Project
Government Printing Office Access
Hill News
House of Representatives Internet Law Library
National Center for Juvenile Justice
National Clearinghouse on Child Abuse and Neglect
National Clearinghouse on Families and Youth
National Institute of Justice
OYEZ OYEZ OYEZ: A Supreme Court Resource
Roll Call
Supreme Court Opinions: Findlaw
THOMAS: Legislative Information on the Internet
U.S. Legislative Branch
The White House

Legal Resources
American Bar Association
Findlaw Law Crawler
Freedom Forum First Amendment Center
The Jefferson Project: The Comprehensive Guide to Online Politics
National Criminal Justice Reference Service
Law Bulletin Publishing Company
LEXIS-NEXIS
United States Code
Villanova Center for Information Law and Policy

The Future

We have only started our journey into the workings of the World Wide Web and law-related education and civic education.

Answers to Page 30

1. b
2. a
3. c
4. a
5. c
6. c
7. b
8. b
9. a
10. b. In division, members stand as a group to indicate whether they are for or against a bill. Cloture is a vote to limit debate, not a vote on a bill itself.

Internet Glossary

Update on Law-Related Education. 22.2. 1998. p. 62. © 1998 American Bar Association.

A

access—freedom to make use of

adult—one who is legally of age (usually 18 or over)

America Online (AOL)—an on-line service

American Civil Liberties Union (ACLU)—a nonpartisan organization devoted to defending the rights and freedoms of people in the United States

C

censor—to examine in order to suppress anything considered objectionable

chat room—channel on the Internet that allows real-time on-line discussions between two or more participants

"cookies"—small tag files that Web sites use to collect and keep information about site visitors

Communications Decency Act (CDA)—a congressional statute enacted in 1996 that banned the display of "indecent" material on the Internet. The Supreme Court later declared the CDA unconstitutional.

E

E-mail—electronic mail

F

Federal Communications Commission (FCC)—the government agency that regulates wire, cable, and radio communications media

filter—software that screens out material that is rated as unsuitable

First Amendment—the amendment to the Constitution that guarantees freedom of religion, of speech, and of the press and also protects the right to assemble peacefully and the right to petition the government.

Fourth Amendment— the amendment to the Constitution that protects citizens' rights to privacy

G

good faith—honest, sincere

H

hyperlinks—links from one text document to another on the World Wide Web

I

indecent—morally bad, improper

Internet—a global network of computer networks

L

list serv—a type of mailing list software

M

minor—one who is under legal age

N

newsgroup—an on-line discussion group dedicated to a specific subject

O

obscene—offensive to accepted standards of modesty or decency

P

privacy—the right to be free from interference with one's private affairs

R

redress—to set right or repair

remedy—a legal way to enforce a right or repair a wrong

S

slamming—the unauthorized changing of customers' telephone exchange or toll services

spam—unsolicited commercial E-mail

T

tort—a wrongful act other than a breach of contract, for which the wronged party may bring civil suit

U

Usenet—a gigantic bulletin board system operated mostly through the Internet

V

vague—not definitely or precisely expressed

W

World Wide Web—a collection of hypertext documents and associated files, linked together, that spans the Internet

Technology and the Law—Terms to Know

Throughout *Update on Law-Related Education,* you have been introduced to terms related to technology and the law. Unscramble the words and use one to complete each sentence.

ronmi	amile	pewgurons	LAO	htorfu mmadtnene
prknihley	treenitn	glimasnm	fertil	thca oomr

1. A _____ is like a meeting room where people can get together and talk.

2. _____ is a popular national commercial service that is a gateway onto the Internet.

3. The _____ guarantees the right of people to be secure in their persons, houses, papers, and effects.

4. _____ is a way to write a letter on one computer and send it to another computer to be read.

5. A person whose long-distance service has been changed without his or her knowledge or consent is a victim of _____.

6. The Communications Decency Act of 1996 made it a crime to transmit obscene communications to a person known to be a _____.

7. The Supreme Court has ruled that the _____ deserves the same First Amendment protection as printed materials.

8. A _____ may have a list of sites containing objectionable material and block access to those sites.

9. A _____ is an area for posting articles on a certain topic.

10. A _____ is specially formatted text that allows the user to jump from one related Web page to another.

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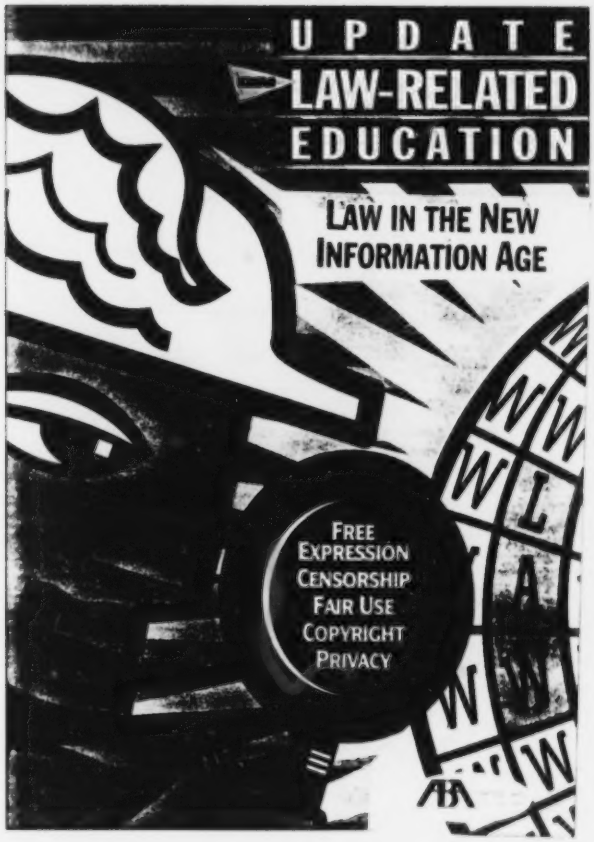
See page 53 for answers.



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Articles, lessons, and educational resources focusing on timely human rights issues

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- Social, Economic, and Biotechnological Issues
- Children's Rights
- Education and Public Attitudes
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UPDATE ON LAW-RELATED EDUCATION

American Bar Association Division for Public Education

Featuring: Educational Tools for Civics, Government, History, and Law Classrooms

HUMAN RIGHTS

"The destiny of human rights is in the hands of all our citizens in all our communities."
– Eleanor Roosevelt

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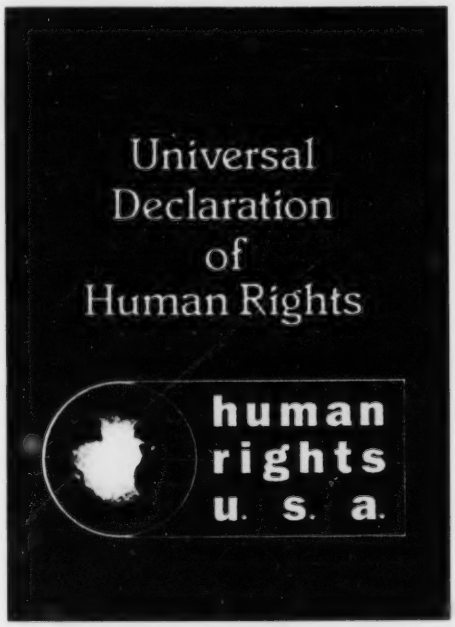
What's Inside?

This edition, fashioned as a retrospective to the 50th anniversary year of the Universal Declaration of Human Rights (UDHR), bears witness to how much can be completed, begun, and aspired to in a single year by a dedicated few. Its pages are replete with stories of justice defined, apprehended, and achieved; of projects hopefully conceived and doggedly accomplished despite barriers of time, space, economics, politics, ignorance, and—worst?—apathy; of global family where all members are held in the highest regard despite their origins, gender, age, and fortune to date.



On behalf of the editors, I especially wish to thank Nancy Flowers for her help in shaping the Human Rights Edition. Characteristic of her extraordinary talents and the high esteem in which she is held, Nancy helped open the door to the many resources we needed to develop our content and shut the door on problems that arose as we struggled through the task of containing a burgeoning worldwide effort into a publication that could never be big enough.

Our poster suggests the many people in the global family, the wonder and proximity of their variety—in a word, the nature and inherent beauty of human life dignified by the UDHR 50 years ago and reconfirmed during its anniversary celebration. We hope that this edition will help ensure their future sustenance and safety.

Seva Johnson
Editorial Director
Youth Education Publications

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Update helps secondary teachers of civics, government, history, and law, as well as law-related education program developers, to educate students about the law and legal issues. The views expressed in this document are those of the authors and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association, the Fund for Justice and Education, or the Standing Committee on Public Education.

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Foreword

Something is missing from law-related education (LRE) in the United States today. Something is missing from the United States educational system. Something is missing from the United States culture. That something is human rights education (HRE). The result is a lack of understanding by American students of the meaning of human rights. I believe this lack of understanding is greatly diminishing the impact of LRE on our students and our society.

This perspective comes from my personal history with LRE and human rights education. I came to understand what HRE was only after almost twenty years of work, first teaching high school social studies and then working in the field of law-related education. At my organization, Street Law, Inc., we refer to law-related education as "Street Law"—education about practical law in everyday life, about the values behind the laws, and about the public policy related to law.

In 1985, I was invited to South Africa where I was confronted with the question, "Why don't you include human rights in your Street Law curriculum?" I answered that I thought teaching about the U.S. Constitution and its Bill of Rights and addressing issues such as police brutality, the death penalty, discrimination, and freedom of religion were teaching about human rights. The South African educators and lawyers countered that we, the people of the United States, seemed to think that human rights was something that applied only to other countries and not to our own. They believed that the educational system in the United States was neglecting the worldwide movement for human rights and not teaching about important human rights documents such as the Universal Declaration of Human Rights (UDHR) and other important treaties, usually called covenants. They said that Street Law and the other civics education programs that they had seen from the United States emphasized civil and political rights but did not address economic, social, and cultural rights.

After reflecting on this conversation, I realized that my South African colleagues were right. Though I had supposedly been "well educated" in the United States, I do not remember hearing the words *human rights* in any class in law school. Though I had taken courses such as constitutional law, poverty law, and public interest clinics, my only knowledge of "human rights" came through the media and Amnesty International (AI). It was through AI that I learned there was, in fact, a small group of dedicated educators in the United States involved in something called human rights education.

In the late 1980s, the time was still not right for human rights education in South Africa, which was still under the apartheid system. It was made clear to me that starting a program with "law" was safer than focusing on human rights if we wished to avoid arrest and the closing down of the new program. My colleagues said that human rights could be added later to the Street Law curriculum being developed and used in South African schools.

Following Nelson Mandela's release from prison in 1990, my South African colleagues thought that it was finally safe to overtly teach human rights in their country. We then collaborated on a textbook called *Human Rights for All*, which was piloted successfully across South Africa with the aid of an outstanding organization called Lawyers for Human Rights. I am proud to say that in 1996, *Human Rights for All* was also adapted for use by students in grades 7–12 and published by the U.S. publisher of *Street Law*. To my knowledge, this is the first social studies text ever adapted for the United States after being developed and piloted first in another country. The text was written generically with the UDHR as its principal organizing structure and examples from around the world that do not refer to any one country. This approach made it easier to adapt the text for use in other countries including the United States. It is now being shared for use in African and Latin American countries and, through a Soros Foundation program, in fourteen countries in Eastern Europe and the former Soviet Union.

The "bringing home" of human rights education activities led Street Law, Inc., to partner with three other U.S.-based organizations—the Center for Human Rights Education in Atlanta, Amnesty International (USA), and the University of Minnesota Human Rights Center—in a Ford Foundation-funded initiative titled Human Rights USA. Now finishing its second year, this project is trying to educate Americans to think, speak, and act differently about human rights in this country. This effort includes reaching out to LRE and other social studies teachers to encourage them to include HRE in their classes. These efforts are supported by a Resource Center in Minneapo-

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lis that makes available a wide range of HRE materials including a new text of lessons called *Human Rights Here and Now*. This is evidence that human rights education is growing in the United States. It's about time!

This year Street Law, Inc., has taken a big step in integrating human rights into the teaching of law in the United States as we publish the sixth edition of *Street Law*, the country's best-selling law text. I thought that if we could integrate human rights into that text, the thousands of students who use it annually could begin to learn the meaning of the UDHR and human rights in general. We are attempting to do this through a new feature called "Human Rights USA" in which students look at U.S. issues from a human rights perspective. For example, in Unit One, "Introduction to Law," an activity provides the opportunity to determine whether students can apply the articles of the UDHR to different U.S. issues.

In looking at the *Street Law* textbook, I see that human rights issues are contained in every unit but are not called "human rights." Our preoccupation with our own Constitution and Bill of Rights has blinded us from seeing the different and, in fact, broader perspective of the rights contained in the UDHR and other international human rights documents. This perspective is not meant to criticize the U.S. Constitution, which I believe, in many ways, may be the finest constitution in the world. Instead, it enables us to admit that our Constitution is not perfect. Looking at it from a human rights framework allows us to see its flaws and gaps more clearly. For example, the UDHR includes the category of rights identified as "economic, social, and cultural rights" including the right to education, an adequate standard of living, housing, food, health care, and jobs. The U.S. Constitution does not include any of these rights or even refer to them as goals for our society. In the United States, we emphasize civil and political rights. Many other constitutions in the world today, including the new South African Constitution, overtly mention economic, social, and cultural rights. This difference is clearly an issue worth discussing, but if our teachers and students do not even know what human rights are, how can they discuss this?

There are many issues in the *Street Law* text and in other law-related education materials that can benefit from an infusion of human rights. We are all aware of the substantial criticisms of our legal system arising from the high media attention devoted to such events as the O. J. Simpson trial, the "Nanny" case, and more recently, the Starr investigation and House impeachment inquiry of President Clinton. These events and other criticisms of the law and legal system can all be looked at from a human rights perspective with the goal of trying to promote a human rights value system in this country. How many teachers and students discussed the O. J. Simpson case by looking at the rights of Simpson through Article 11 of the UDHR (presumed innocent until proven guilty) or the victim's right to security of the person under Article 3? Or discussed the Starr investigation through Article 12, which says "no one shall be subjected to arbitrary interference with his (her) privacy, family, home or correspondence, nor to attacks upon his honor or reputation"? Would not all our classroom and other public discussions of issues such as the death penalty, gun control, and sexual harassment benefit from an infusion of the language and values of human rights?

There is a legitimate concern today about the lack of values of public officials and of the American people as a whole. Books about "virtue," "ethics," "communitarianism," and other related issues decry our present values. However, rarely do these books mention human rights or the one document, the UDHR, that virtually every country in the world has agreed upon as a statement of shared values. If we begin to look at our public officials' actions, our neighbors' actions, and our own actions through a prism of human rights, would things be different? I think they would be.

I also think that it is imperative that law-related educators begin to look at their own teaching of LRE and ask whether they are providing students with all the tools they need for effective analysis and critical thinking. Can students begin to apply human rights to the issues in this country without also learning what U.S. law says about such rights? I think they cannot. They need to know this country's law as it relates to the human rights issues, such as freedom of speech, the rights of those accused of crime, discrimination, and right to housing, that they are examining.

My experience has led me to conclude that to be successful Street Law and other types of LRE must include human rights. To teach law without human rights may be the equivalent of teaching what is, without teaching what should be. The goal of every good LRE program has always been "justice," but the South Africans have taught me that we cannot educate for justice without also educating for human rights.

Edward L O'Brien

Edward L. O'Brien
Washington, D.C.

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STREET LAW

The Universal Declaration of Human Rights: 50 Years Old but Still Coming of Age

What is the past, present, and future of international human rights?

Nancy Flowers

Update on Law-Related Education, 22.3, 1999, pp. 6–11. © 1999 American Bar Association.

At dawn on the morning of December 10, 1948, the General Assembly of the United Nations unanimously voted to adopt the Universal Declaration of Human Rights (UDHR). (Forty-eight member states voted in favor of the UDHR and eight abstained—Saudi Arabia, South Africa, the Soviet Union, and four Eastern European states and a Soviet Republic controlled by the Soviet Union.) Cajoled into working all night by the redoubtable Eleanor Roosevelt, head of the United Nations Commission on Human Rights charged with drafting the declaration, the weary delegates finally stood for a moment of silence to honor the historic significance of their act. They had just adopted the first document in human history to codify rights that apply to every person on the earth regardless of citizenship in a particular country (thus the declaration's title: "Universal," not "International"). As the Vienna Declaration of the 1993 UN Conference on Human Rights reaffirmed, "Human rights and fundamental freedoms are the birthright of all human beings."

The UN Charter (1945) had already proclaimed the "inherent dignity" and "equal and inalienable rights of all members of the human family" and set forth the revolutionary concept that how a government treats its citizens is not just a domestic matter but a legitimate international concern. The drafters of the UDHR defined those principles in 30 articles that form a comprehensive statement covering economic, social, cultural, political, and civil rights.

The fundamental values that inform the UDHR are inherent in every culture that values justice and respects human dignity. Its written precursors include the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of Man and Citizen (1789), and the U.S. Constitution and its Bill of Rights (1791). Although most of these documents exclude women, people of color, and members of certain social, political, and religious groups, the principles they embody have nevertheless inspired oppressed people throughout the world to struggle for their rights. It was only in the 20th century, especially in response to the horrors of World War II, the Holocaust, and the efforts of countries emerging from colonialism to claim their right to self-determination and equality, that universal human rights was transformed from a utopian concept to a reality in international law.

See the Teaching Strategies for this article on pages 41, 43, and 45.

The UDHR and the Cold War

Since 1948, the UDHR has truly come to embody "a standard of achievements for all people and all nations" (UDHR Preamble), and its principles have been incorporated in the constitutions of most of the nations now in the UN. However, as a declaration, the UDHR was the weakest form of international law, a mere statement of principle without provisions for enforcement or the status of binding law. As Eleanor Roosevelt said of the UDHR on the day following its adoption, "It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms ... ." For the rights defined in the UDHR to have full legal force, they needed to be written into a *convention*, an international agreement that sets norms and standards (also

Nancy Flowers, a writer and consultant for human rights education, lives in Bolinas, California. She is Curriculum Coordinator for Amnesty International and a founding partner in Human Rights USA.

Ninety-three percent of Americans have never heard of the UDHR.

1997 Survey, Human Rights USA

referred to as a "treaty" or in two cases, a "covenant"). (These and other human rights terms are defined in "A Human Rights Glossary" on page 61.) Therefore, the Human Rights Commission immediately set to work to frame such a convention, developing the 30 articles of the UDHR into more detailed and comprehensive provisions.

However, political events immediately intervened. Whereas in 1948 all member states of the UN were able to endorse a single human rights document, only a few years later the so-called "Cold War" was raging between capitalist and communist countries, with the two sides holding sharply different views about human rights. The "West Bloc," or capitalist countries, gave priority to civil and political rights, such as those contained in the U.S. Bill of Rights, which had served as an important model for the UDHR, e.g., freedom of speech, religion, and assembly and the rights to a fair trial and the vote. The "East Bloc," or communist countries, considered social, economic, and cultural rights to be most important, such as the right to health care, housing, education, employment, and a living wage.

By 1952, the Human Rights Commission was forced to acknowledge that these conflicting priorities of East and West made agreement upon a single human rights convention impossible, and it reluctantly decided to divide the unitary vision of the UDHR into two separate documents. Even with this compromise, the two resulting conventions took 14 years to make their way through the drafting and amendment processes in the Commission to the UN General Assembly. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted by the General Assembly in 1966. Yet another decade passed before the two covenants achieved the required number of ratifications to enter into force as international law in 1976. As of 1998, over 130 governments have ratified both these covenants; the United States, however, has still ratified only the ICCPR but did so with many reservations, or formal exceptions, to its full compliance.

This long delay in realizing the covenants has profoundly affected the way the world community has come to regard the UDHR. Between 1948 when the General Assembly adopted the UDHR and 1976 when the two covenants became effective, the Universal Declaration was the only comprehensive human rights document in existence.

> During this time the need for authoritative standards to define the human rights obligations of UN member states became ever more urgent. As time went on, the Declaration was used with ever greater frequency for that purpose. (Buergenthal 1995)

The UDHR thus became widely invoked, imitated, recognized, and revered. In the absence of a normative, legally binding human rights document, the UDHR was transformed into that document through nearly three decades of use, achieving the status of customary international law because people around the world treated it as though it were law. Today the UDHR and the two covenants, the ICCPR and the ICESCR, are commonly referred to as the International Bill of Rights. Together these three documents form the foundation on which the whole structure of international human rights law is built.

Since the end of the Cold War in the early 1990s, the politicized division of human rights has largely been healed. At the 1993 Second World Conference on Human Rights held in Vienna, the delegates declared human rights to be "universal, indivisible, and interdependent and interrelated" (Vienna Declaration 1993), meaning that all human rights are part of a complementary framework and that neither social and economic nor civil and political rights take priority over the other. The Vienna Declaration thus undermines the "full-belly" thesis of some developing countries that civil and political rights must "wait" until everyone has a decent standard of living. Instead it recognizes that the two sets of rights are interactive, not sequential. For example, how a person exercises the civil right to vote in free elections is greatly affected by the right to an education, to obtain information freely, to express oneself, to associate with others, or even to obtain the necessities of life. Similarly the economic right to housing means little if a person does not have the right to vote in free elections or express oneself about the quality and equity of that housing.

The United States continues to demonstrate an anachronistic schizophrenia about human rights.

International Human Rights Law as a "Work in Progress"

Human rights law is a reflection of human need. In addition to the Covenants and the UDHR, the UN has adopted more than 20 human rights conventions that build upon and further elaborate and define the general principles of the UDHR. Some of these conventions prohibit specific

abuses, such as the Convention on the Crime of Genocide (1948), the Convention on the Elimination of All Forms of Racial Discrimination (1966), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Other conventions protect the rights of especially vulnerable people, such as the Convention Relating to the Status of Refugees (1951), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), and the Convention on the Rights of the Child (CRC, 1989).

[The UDHR's] grand simplicity of language and inspiring vision make it accessible to ordinary people everywhere.

Like all human institutions, human rights law is evolving in response to changing circumstances in the world. For example, the UDHR makes no reference to the environment, largely because in 1948 few recognized the threat to our planet from hazards such as radiation, industrial pollution, pesticides, and general ecological degradation. Today a UN convention on environmental rights is in the drafting stage. Similarly land mines are not mentioned in the UDHR, but citizen advocacy brought this problem to international attention in the early 1990s, with the result that in 1997 the UN adopted a new Convention on the Prohibition of Land Mines.

The UN General Assembly has recently declared that what the world needs now is not more human rights conventions but more implementation of the conventions already in place. The existing body of human rights laws is a great achievement of international cooperation on behalf of a better world, but these laws are only abstractions until all the peoples of the world

From Concept to Convention: How Human Rights Law Is Made

How do these international human rights conventions come into being? The process involves many people and ongoing collaboration and consensus building.

1. Recognized a need Many groups concerned about human rights problems, including governments, intergovernmental organizations (IGOs) such as UNIFEM and UNICEF, and nongovernmental organizations (NGOs), work to bring this problem to world attention. Especially important in the process are NGOs, which are increasingly vocal in representing the needs of ordinary people in the international forum. Some NGOs such as Amnesty International, the Girl Scouts, Oxfam, CARE, and the Red Cross and Red Crescent are large and well-known, working internationally on a wide variety of issues. Other large NGOs are dedicated to advocacy on a single concern (e.g., Save the Children Foundation, Habitat for Humanity, Food First, the Sierra Club), but the majority are small institutions that address mainly local concerns (e.g., a battered women's shelter, a coalition to protect old-growth forest, an alliance for better schools). What they have in common is their nonprofit status and their grassroots membership.

When sufficient pressure and attention are brought to an issue, the General Assembly instructs the UN Human Rights Commission to oversee the drafting of a declaration or convention to address that problem.

2. Drafted by a working group Working groups consisting of representatives of UN member states, as well as representatives of IGOs and NGOs, formulate the text of a document, a task that involves prolonged debate and compromise.

3. Adopted by vote of the UN General Assembly Once adopted, the convention is made available to UN member states for their formal acceptance.

4. Signed by UN member states By signing a convention, a member state indicates that it has begun the process required by its government for ratification. In signing the convention, it also indicates that it will honor the spirit and principles of the document.

5. Ratified by UN member states No state is required to ratify any convention. However, if a government does so, it commits itself to comply with the specific provisions and obligations of the document. It takes on the responsibility to see that its national laws are in agreement with the convention and to report regularly on its compliance. If a government approves a convention in general but objects to a particular article, it can submit a reservation stating that it will not agree to follow this article, so long as the reservation does not undercut the fundamental meaning and purpose of the convention.

In the United States, the process towards ratification begins when the President endorses the document by signing. It is then submitted to the Senate, along with any recommendations of the executive branch. The Senate Foreign Relations Committee first considers it, conducting hearings to monitor public reaction. The committee then may recommend the convention, sometimes with reservations. In some cases, legislation might have to be enacted in order to implement the convention. Next the full Senate considers the convention. If it votes approval, the President formally notifies the UN Secretary General that the United States has ratified and become a State Party to the convention.

6. Entered into force A convention goes into effect when a specified number of member states have ratified it. For example, the ICCPR and ICESCR were adopted in 1966; however, each did not enter into force until 1976 when the required number of 35 member states had ratified it.

can enjoy the rights and freedoms they promise.

Human Rights Law Outside the UN System

Although most human rights law is created by and linked to the UN system, countries in Europe, the Americas, and Africa have also created regional human rights documents that extend the principles of the UDHR to people living in these parts of the world. The first and most effective of these is the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 1950, entered into force 1953), which establishes the European Court of Human Rights and permits individuals, NGOs, and governments to petition the court.

The American Convention on Human Rights (adopted 1969, entered into force 1978) was drafted by the Organization of American States (OAS), which includes governments of North and South America. The newest and, so far, least developed of these regional documents is the African Charter on Human and Peoples' Rights (adopted 1981, entered into force 1986), which was developed by the Organization of African Unity (OAU).

While all these documents draw on the model of the UDHR and the two international covenants, they also reflect distinctly regional concerns. For example, the African Charter sets forth both individual and "people's" rights and spells out specific duties of both states' parties and individuals.

At first, the General Assembly was ambivalent about these regional human rights agreements, fearing they would undermine the universality of its UDHR-based system. However, their proven value has led the General Assembly formally to encourage areas without regional human rights treaties to establish them (General Assembly Resolution 1977). So far, Muslim states have since created the Cairo Declaration on Human Rights in Islam (1990), and efforts are under way in Asia and the Pacific to draft a document for that extremely heterogeneous region.

International Humanitarian Law, sometimes referred to as the Law of War, also relates closely to the rights of all human beings but focuses specifically on situations of armed conflict. Its purpose is "alleviating as much as possible the calamities of war." The first Geneva Convention of 1864 dealt exclusively with the treatment of the sick and wounded; in the Geneva Conventions of 1949, the areas of concern included a vast range of problems stemming from warfare, including protection of prisoners of war, civilian populations, and medical and religious personnel and prohibition against practices such as torture and chemical weapons. The Geneva Conventions are promulgated and implemented by the International Committee of the Red Cross (ICRC).

The United States and Human Rights

Despite the assertion of the Vienna Declaration that all human rights are indivisible and interdependent, the United States continues to demonstrate an anachronistic schizophrenia about human rights. On the one hand, the United States has played a major role in the establishment of the United Nations, in the drafting of the UDHR and most subsequent human rights conventions, and in the upholding of certain human rights standards for the whole world. On the other, because the United States has had a vexed relationship with both the UN and the developing structures of human rights law, it has ratified very few of the human rights treaties it helped create. For example, the United States is one of the few countries that has not ratified the ICESCR or Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and of all the member states of the UN, only the United States and Somalia, which has no effective government at the present, are not signatories to the Convention on the Rights of the Child (CRC). Most recently the United States has declined to support the Convention on the Prohibition of Land Mines (1997) and the establishment of the International Criminal Court, both of which it was instrumental in creating.

People in the United States enjoy a rich heritage of civil and political rights guaranteed them by their Constitution, but for most of them, *human rights* means "civil rights." Americans are familiar with law that restrains governments from violating the rights of citizens; few are as comfortable with law that requires governments to provide for citizens. Most Americans are unaware, for example, that Article 25 of the UDHR guarantees them as a human right "a standard of living adequate for the health and well-being of himself [sic] and of his family, including food, clothing, housing and medical care and necessary social services." Not only does the average citizen fail to recognize hunger and housing as human rights issues, but most advocates for the hungry and the homeless are equally unaware. In 1993 when the newly installed Clinton administration made its big push to establish universal health coverage, no one argued for health care as a basic human right. Nowhere in our debates over welfare or educational reform are these issues framed in human rights terms.

Indeed, for most Americans, human rights problems happen in faraway countries—a Bosnia, a Rwanda, a Cambodia, or an Afghanistan—where people are at war, the economy is undeveloped, or an authoritarian regime has superseded the rule of law. Asked what human rights problems exist in this country, most people respond with a puzzled look or say, "Here?"

Bringing Human Rights Home

The same lack of awareness was revealed in a recent national survey conducted by Human Rights USA, an organization dedicated to educating Americans about human rights. It found that 93 percent of Americans had never heard of the UDHR. Yet we do an excellent job in this country teaching about our constitutional rights. Even students who doze through their required high school American history class know well that they have rights and can name some of them. The rights they mention, however, are almost always civil rights. Although the words *human rights* can be found every day in the media, most people have only a vague notion of the history and development of human rights or of the legal framework that protects and promotes them.

Part of the problem is that most people in the United States, including lawyers, public servants, and educators, even those in law-related education programs, rarely learn and rarely teach about the UDHR. Although well established in the curriculum of many countries around the world, human rights education has never been part of the educational mainstream in this country.

Why is the UDHR, which many historians consider "the greatest achievement of the United Nations" (Humphrey 1984), almost unknown in the United States? Part of the answer lies in the vagaries of political opinion. With the Great Depression still present and World War II looming, Franklin Roosevelt could speak in his 1941 Inaugural Address of "four essential freedoms," which included "freedom from want, ... which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world." But in the thriving postwar economy and Cold War climate of the 1950s and 60s, the government-sponsored programs of the New Deal smacked of socialism, and the concept of state-supported guarantees for housing, health care, and a living wage promised by UDHR Article 25 appeared downright "red" to some conservatives. Furthermore the forces of U.S. isolationism, which had been silenced by the international struggle against fascism, began to reassert themselves, some demanding that the United States withdraw altogether from the UN. Teaching about UN-endorsed human rights that seemed to compete with the U.S. Constitution was out of the question in all but the most liberal environments. Also the UDHR's fundamental assertions of human equality were as discomforting to the racially segregated United States as they were to South Africa. Better to ignore the UDHR than face the painful self-scrutiny it imposed. Not that most educators made a conscious choice against human rights education—rather, then, as now, few people knew anything about the UDHR or recognized it as important for the education of American citizens.

Other explanations for why the UDHR is not taught in U.S. schools along with the Magna Carta and the Bill of Rights are more practical. Many concerned educators simply feel unqualified, lacking the background, experience, or materials they need to teach about human rights. Others don't know "where to put it" in an already overcrowded curriculum dominated by mandatory testing. Some feel the subject is too political, especially when domestic human rights violations come into question, and many fear attacks from conservative community forces that often oppose such subjects as global and multicultural education.

The Future of Human Rights

Although there are still voices raised against American participation in the UN, most people today recognize the need for international cooperation and understanding in our increasingly interdependent world. Human rights seems to offer the best ethical and humane standard for living in the global village of the 21st century.

> *"Everything we have done in terms of human rights, what we have thought, said, or proposed, what we have suffered, has been intended to be nothing more than an act of faith, an act of love. A gratuitous response, without reason."*
> *David Fernandez, Mexico*

Indeed, education in human rights is itself a fundamental human right and also a responsibility. The preamble of the UDHR exhorts "every individual and every organ of society ... to strive by teaching and education to promote respect for these rights and freedoms."

Fortunately the 50th anniversary of the UDHR and the UN Decade for Human Rights Education, 1995–2004 have stimulated new resources and enthusiasm for making human rights part of everyone's basic education (See Resources for Teaching, p. 59). Ideally human rights are taught across the curriculum and across the school years. Although social studies provides the most obvious "fit," many subjects from science to art can be approached from a human rights perspective. Human rights education also creates a context and motivation for service learning and community service.

Law-related education is an ideal setting for teaching human rights. The range of possibilities is enormous, both for examining the UDHR in a historical and constitutional perspective (e.g., see Teaching Strategy "Comparing Rights Documents," p. 43), as well as in international relations (e.g., see "Human Rights Around the World and at Home," p. 41) and current events (e.g., see "Human Rights in the News," p. 45). Ultimately human rights principles such as justice, nondiscrimination, and respect

for human dignity should be reflected in all aspects of our educational system.

The UDHR is at the core of all human rights education. Unlike subsequent and increasingly technical conventions, the UDHR can be read, understood, and cherished by everyone. It has symbolic and practical significance as the constitution of the whole human rights movement, but also its grand simplicity of language and inspiring vision make it accessible to ordinary people everywhere. It has not only legal authority but also poetic power.

Everyone has a right to know the UDHR and to make it part of daily life. What Eleanor Roosevelt observed on the 10th anniversary of the UDHR is no less true in this 50th anniversary year:

> Where, after all, do universal rights begin? In small places, close to home ... —so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he [sic] lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world. (Roosevelt 1958)

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Special! UNESCO's *Practice of Citizenship* Kit

Dedicated "toward a broader concept of civics education," this kit from UNESCO includes basic learning materials on peace, human rights, democracy, and tolerance "to assist its Member States in promoting values, attitudes and behavior upon which a culture of peace can be founded." Twelve booklets and pamphlets; attractive carrying case. See this and other UNESCO educational materials at http://www.education.unesco.org

United Nations Human Rights Documents

Note: Dates refer to the year the UN General Assembly adopted the document.

United Nations Charter, 1945

Universal Declaration of Human Rights, 1948

International Covenant on Economic, Social and Cultural Rights, 1966

International Covenant on Civil and Political Rights, 1966*

Principal Human Rights Conventions

Convention on the Prevention and Punishment of the Crime of Genocide, 1949*
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949
Convention Relating to the Status of Refugees, 1951*
Slavery Convention of 1926, Amended by Protocol, 1953*
Convention on the Political Rights of Women, 1953*
Convention on the Nationality of Married Women, 1957
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962
Convention on the Reduction of Statelessness, 1961
International Convention on the Elimination of All Forms of Racial Discrimination, 1966*
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 1968
International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973
Convention on the Elimination of All Forms of Discrimination Against Women, 1979
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984*
Convention on the Rights of the Child, 1989
Convention on the Rights of Migrant Workers and the Members of Their Families, 1990

* Indicates that the United States has ratified this convention.

PERSPECTIVE

Economic Human Rights: The Time Has Come!

Anuradha Mittal

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In 1948, the United Nations adopted the Universal Declaration of Human Rights (UDHR) in an effort to establish a standard for dignified human life around the world. Among its 30 articles outlining the civil and political freedoms generally associated with human rights, the UDHR also holds that economic security should be universally upheld—"Everyone has the right to a standard of living adequate for the health and well-being of himself (herself) and of his (her) family, including food, clothing, housing and medical care and necessary social services ... " (Article 25, UDHR). The 50th anniversary of this historic document in 1998 provides an important opportunity to evaluate how far the world has progressed in translating these goals into reality.

Human Rights in the United States

Such reflection is especially important in the United States, given the strong leadership role that it played in the drafting and adoption of the UDHR. Being the wealthiest nation in the world also makes the United States the most capable of upholding the economic human rights of its people. However, upon closer examination, it becomes clear that these universal goals have not yet transformed the American reality. Measuring the rights laid out in the UDHR against the actual status of the people at the bottom of the American economy reveals a huge gap into which millions fall daily.

A recent study by the Economic Policy Institute showed that the percentage of people living below the poverty line in this country has risen from 11.6 percent in the 1970s to 14.2 percent in 1994. The most vulnerable members of society are the ones who suffer most when poverty increases. Research by the Population Reference Bureau showed that out of 38 million people living below the poverty line in the United States, 40 percent were children and 10 percent were adults over 65. Additionally, the Children's Defense Fund reported that one-fourth of all children under the age of six nationwide live in poverty, a statistic higher than in any other developed country.

The effects of this rise in poverty are most visible in the denial of basic needs, such as food. A nationwide survey published in 1997 revealed that approximately 30 million American were hungry, and at least 12 million of these were under 18 years old. This is a 50 percent increase since 1985. Another team of researchers estimated that 8.4 million people suffer from food insecurity in California alone. They predicted that by 2000, this number may grow to include as many as one-third of California's children. These figures are even more startling in light of the evidence that such economic changes were not distributed evenly.

In fact, the Economic Policy Institute (EPI) found that the incomes of the rich rose significantly at the same time that poverty was growing. In 1978, the typical CEO salary was 60 times that of the average worker. By 1995, the average CEO earned about 173 times as much as a typical worker. This is the highest wage gap in the industrialized world, leading to a deep disparity between the poor and the wealthy. At the same time, the government has done nothing to equalize the scales. In fact, the EPI estimated that the net tax bill of the wealthiest 1 percent of American families has actually fallen by $46,792 since 1977.

Such statistics support the analysis on which Food First was founded: hunger is not due to an absolute shortage of food but rather to political and economic factors that skew its distribution. The 1996 welfare reform bill signed by President Clinton was further evidence of the tendency to burden the poor while leaving the wealthy untouched. The bill deepened the plight of the poor by removing the safety net from those who needed it most. Among other things, it denied food assistance to noncitizens and limited its availability to able-bodied

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adults, threatened cash and Medicaid support for 300,000 children with disabilities, reduced AFDC-type aid from 71 percent of poverty-line income to only 57 percent, and tied the remaining aid to work requirements.

On the one hand, this Draconian law pushes additional workers into an economy already short on jobs—driving down wages for those already struggling for subsistence. On the other hand, having to work at the first available job does not allow aid recipients to build skills and receive training they need to secure better employment in the future. All in all, the reform reduced the incomes of one-fifth of all American families with children by an average of $1,300 a year. The Urban Institute estimated that by eliminating AFDC, the new law will push an additional 1.1 million children into poverty. By 2003, an additional 2.6 million people overall will be living below the poverty line. It is clear that this reform was not adopted with the government's obligation to protect, respect, and implement economic human rights of people in mind. In fact, the head of the United States delegation to the November 1996 World Food Summit stated that the United States could not support the summit's plan of action language about the right to food because welfare reform would then be in violation of international law.

We Can't Sit Still!

In response to the unconscionable socioeconomic conditions facing millions in this country, Food First Institute for Food and Development Policy has launched "Economic Human Rights: The Time Has Come!" a national campaign that has used the UDHR anniversary to publicize the rise of domestic hunger and poverty as a violation of basic human rights. The campaign has organized congressional hearings, which provide a forum for underrepresented groups and individuals to speak out about the concrete effect of regressive legislation and the poverty that results. The first hearing was on May 2, 1998, in Oakland, California, and the second addressing the same issues at a national level was organized in Washington, D.C., in September. Food First's efforts have already gained the support of over 180 organizations representing a spectrum of interests, including labor, hunger, homeless, human rights, women, immigrant, and faith-based communities. It has also been endorsed by several progressives in the Congress, including Senator Paul Wellstone and Representatives Ron Dellums, Bob Filner, Esteban Torres, Melvin Watt, George Miller, John Conyers, Cynthia Ann McKinney, Barbara Lee, Earl Hilliard, Nancy Pelosi, and Xavier Becerra.

This campaign is bringing the human face of poverty to the forefront of debates that so often lapse into muddled collages of catch phrases and sound bites. No one can deny that dignified human life requires access to basic needs such as food, shelter, and jobs. Fifty years ago, the UN General Assembly agreed that these should be upheld as universal human rights. In making it painfully clear that millions in this country are not getting these needs met, this growing coalition is showing the policy makers that current conditions are unacceptable. We cannot allow the UDHR's anniversary to simply pass, congratulating ourselves on the beauty of our ideals while allowing the status quo to continue unchallenged.

For More Information . . .

To find out more or to participate in the campaign and the hearings, contact

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UN 23783, Lake Success, NY, November 1949. Mrs. Eleanor Roosevelt holding a Universal Declaration of Human Rights poster. Credit: UN photo.

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Evolution of Human Rights in the Age of Biotechnology

Can human rights and biotechnology co-exist?

Benjamin Hron

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In February 1997, Dr. Ian Wilmut introduced the world to Dolly, the first successfully cloned mammal, and drew international attention to the possibilities and rapid advances of biotechnology. Although biotechnology has not necessarily held the public's attention until recently, it has been a growing concern of scientists, industry, governments, and international organizations for years. Many new and pressing human rights issues are raised by this technology. Biotechnology invites us to re-examine concerns about reproductive technology, the rights of indigenous peoples, and the rights of future generations in a new light. It also creates new areas for human rights discussions such as germ-line manipulation (altering the genes in egg, sperm, or embryo cells to alter characteristics of the developing fetus) and genetic screening (using genes to test for genetic disease and genetically influenced traits). Unfortunately, the difficult issues that are being addressed often overshadow, particularly in the public's eye, the potential benefits of biotechnology. The future will be determined by how well national governments and international organizations are able to regulate the application of the technology to maximize the benefits and minimize the problems.

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Global Biotechnology

The primary development of biotechnology occurs in three places, the European Union (an economic and political cooperative among 15 European nations), the United States, and Japan. These areas represent both the largest developers of biotechnology and the largest markets for the technology (Ashworth 1996). Not surprisingly, the biotech industry has created a bridge between pharmaceutical companies and scientific research institutions, primarily universities. The relationship between industry and academia is essential because much of the research and development of new technology is done at institutions of higher education. The United States has an advantage in this respect because its universities are subject to fewer government regulations than universities in Japan and most of Europe. Although its basic research lags behind the United States, Japan excels at applied research. The long-term approach taken by Japanese companies allows for more prolonged and in-depth research than is often possible in the United States. In addition, the Japanese are more open to broader applications of technology than Americans, and Japanese companies apply biotechnology to many more areas than in the United States, thereby resulting in greater potential for new products and new applications (Cunningham & Chow 1992). The European Union has lagged behind both the United States and Japan in biotechnology development (Szczepanik 1993). It is important, however, to look at the development of biotechnology regulations in the EU because they parallel in many ways the development of international attempts to regulate biotechnology. The EU has implemented directives on the release into the environment of genetically modified organisms (naturally occurring plants or animals whose genetic material has been altered to give the organisms a desired characteristic they do not naturally possess) and placed strong restrictions on the patenting of life forms. More importantly, the EU has done at a more local level what the United Nations must do at a global level: resolve differences among many nations and develop a universally acceptable method of regulating biotechnology.

Biotechnology's Potential Benefits

Biotechnology offers humans an upclose look at the basic components of life, one that may be too close for comfort. The mapping of the human genome, undertaken by the Human Genome Project, is expected to be

completed in the early part of the next millennium. Once completed, every one of the roughly 100,000 genes in human DNA will be identified. This and other knowledge to be gained by way of biotechnology leads to endless possibilities. Unlike many other scientific "advancements," biotechnology has the potential to directly shape the future of life on earth through direct manipulation of genes. Biotechnology offers many exciting possibilities for improving life. It has already been used to add extra nutrition and flavor to everyday foods, genetically alter microorganisms to help clean up oil spills or recycle rubber, and create a better detergent for clothes.

It is in medicine, however, that most people will be affected by the advances of biotechnology. Microorganisms have already been genetically altered to produce proteins used in human pharmaceuticals, but directly manipulating human genes is probably not far in the future. Germ-line manipulation (GLM), one of the most anticipated areas of biotechnology, offers the prospect of eliminating many genetic defects that may be life threatening or life impairing. Using a technique known as genetic screening, doctors are able to determine if a person will develop or be a carrier of a hereditary genetic defect. At present these defects cannot be altered, but with new GLM techniques, doctors will some day be able to offer parents the possibility of replacing defective genes with working copies (Munayyer 1997). However, future medical advances are not limited to manipulation of microorganisms and the human genome. Biotechnology may soon produce animals genetically altered to develop organs for human transplants and to produce compounds in blood or milk to be harvested and used in human medication. The Roslin Laboratory in Scotland, where Dolly was cloned, successfully added a human gene to another cloned lamb, Polly, born in July of 1997, and hopes to develop mechanisms to turn animals into living pharmaceutical factories (Marden 1998).

Human Rights Debate

The potential benefits of this new technology are readily apparent; it is the pursuit and potential misuse of this technology that gives rise to human rights concerns. Biotechnology research and development rely upon the accumulation of genetic samples, but because these samples may be obtained in the process of routine medical examinations, questions arise about the informed consent of the sample donors, particularly with respect to indigenous peoples. Several special issues arise when collecting genetic samples from indigenous peoples for research and possible industrial use.

Over time, exposure to diseases can give rise to acquired genetic immunity. Therefore, inhabitants of developing countries often have natural defenses against diseases that inhabitants of developed nations do not, and vice versa. Researchers want access to the genetic diversity of indigenous peoples to learn more about what genes cause these differences. But many people worry that companies will exploit indigenous peoples by obtaining samples for research without informed consent and then fail to share the benefits of resulting breakthroughs. It is now recognized that indigenous peoples must be allowed to decide whether or not they will be participants in genetic research. Yet can informed consent be given when people may not understand the nature, purpose, or potential consequences of genetic research and technology? In some cases, indigenous groups may consent to research but have strong moral objections to the industrial aspects of biotechnology. In particular, many groups object to the patenting of genes, something acceptable in one form or another in many developed nations including the United States, Japan, and the EU (Ching 1997). The UN Convention on Biodiversity, the International Bioethics Committee, and the Commission on Human Rights have all addressed aspects of these concerns.

UN Guidelines for Biotechnology Research

The Biodiversity Convention, which took effect December 29, 1993, provides guidelines for the relationship between developed and developing nations with regard to biotechnology and biotechnology research. Under the convention, developed and developing nations essentially agree to a trade of technology for access to natural resources (Tinker 1994). Although the convention primarily concerns access to nonhuman natural resources, the principle of exchanging these resources for technology sets a precedent for compensating donors. The importance of conserving biodiversity is relevant to the protection of human genetic diversity, which will be discussed later.

General guidelines for biotechnology research are addressed extensively by the International Bioethics Committee (IBC). The IBC was created in 1992 by the United Nations Educational, Scientific, and Cultural Organization (UNESCO), with the goal of drafting an international agreement on the protection of the human genome and stressing a universalistic approach to biotechnology (Lenoir 1993). The result is the Universal Declaration on the Human Genome and Human Rights. The declaration is scheduled to be UNESCO's contribution to the celebration of the 50th anniversary of the UDHR. According to the declaration, the human genome is part of the "common heritage of humanity" (Le Bris, et al. 1997). The declaration addresses aspects of research on the human genome, rights of researchers and subjects, duties of states toward their citizens, and international cooperation between developed and developing

nations (http://www.eurekalert.org/E-lert/current/public_releases/deposit/unesco_genome.html, visited 8/26/98). As well as confronting many of the key human rights issues of biotechnology, the declaration also contains measures for implementation (Le Bris, et al. 1997). It calls upon states to promote the principles it outlines through education and information dissemination and by forming ethics committees. The declaration also gives the IBC the task of identifying practices contrary to human dignity and making recommendations to UNESCO (http://www.unesco.org/ibc/uk/genome/projet/index.html, visited 9/9/98).

The rights of indigenous peoples are addressed in greater detail in the UN Draft Declaration on the Rights of Indigenous Peoples, drafted by a subcommittee of the UN Commission on Human Rights. The draft, expected to be adopted by 2004, gives special protection to the genetic resources of indigenous peoples and acknowledges their right to protect their property and receive compensation for property taken without consent (Ching 1997). The declaration, however, protects all subjects, not just indigenous peoples, involved in biotechnology research. Unlike previous documents, the draft explicitly includes genetic resources to be protected as cultural property.

The UN and the Future of Biotechnology

Much of the recent focus on human rights and biotechnology concerns research methods, but a growing concern is the potentially harmful uses of this technology. When the UN proclaimed the Universal Declaration of Human Rights 50 years ago, the world was still reeling from World War II. The atrocities committed during the war strongly influenced the declaration. Some of the concerns about biotechnology are reminiscent of those raised by the Nuremberg trials, specifically about the pursuit of a master race. Other concerns focus on the possibilities of genetic discrimination and violations of the right to privacy.

The frenzy over human cloning and eugenics created by the Dolly announcement was probably excessive, but concern is justified. Human cloning, although it receives more attention, is probably the more innocuous of the two. Often misunderstood is the extent to which factors other than genes affect who we are. To put things in perspective, human cloning creates nothing more than identical twins. Identical twins share all the same genes but have some physical and often many emotional and psychological differences. Therefore, though the issue of human cloning still requires extensive discussion and regulation, it is not much different from reproductive technologies such as artificial insemination and in vitro fertilization. The fears that have been raised about the use of biotechnology to develop a master race reflect a concern not about cloning, but about eugenics.

The term *eugenics*, coined by scientist Francis Galton in 1883, refers to the idea that many human traits are genetic and therefore selective breeding could produce a superior human species (Devlin, et al. 1997). Using the same genetic screening and GLM techniques that have so many potential benefits, it would be possible to fix much more than life-threatening and life-impairing diseases. Genes for height, eye color, skin color, and perhaps even temperament, intelligence, and sexual orientation could be manipulated to eliminate characteristics deemed undesirable by individuals or groups in society (Munayyer 1997). Aside from creating a new aspect to the wealth gap, based upon those who can and those who cannot afford to manufacture the perfect child, eugenics promises to dilute the genetic diversity of the human species. It is important to keep in mind that changes in germ cells are inheritable. Therefore, it is not only the child but also all future generations that are affected. Although every parent's "ideal child" will be different, the similarities between them will dull the gene pool over time. The implications of this go beyond lack of physical diversity, or even lack of psychological diversity, to the problems inherent in a lack of genetic diversity. New genetic combinations and genetic mutations are evolutionary mechanisms of survival. Simply put, eugenics would limit the ability of the human species to adapt.

Human cloning and eugenics remain on the horizon for now, but the possibilities of genetic discrimination and invasion of privacy are more pressing. The mapping of the human genome combined with further advances in genetic screening have the potential to do more harm then good. Scientists may soon be able to determine important information about a person before birth. Two areas in which potential discrimination is a possibility are health and intelligence. With genetic screening, a child's IQ, susceptibility to disease, and life expectancy could be determined as easily as eye color and gender. Schools, employers, and insurance companies could all use such information to favor the genetically "gifted." The possibilities for discrimination are significant, as are the privacy issues involved. Even if the government outlaws the use of genetic screening, it would be impossible to prevent samples from being obtained and tested. Because almost every cell in the body contains a complete set of genes, a routine blood test could also be used to obtain information that individuals would never volunteer.

Protection Against Genetic Discrimination

The UN has begun to address some of these concerns. The Convention on Biodiversity may be seen to encompass human genetic diversity. But it is the Universal Declaration on the Human Genome and Human Rights

that deals with many of these topics in depth. The declaration recognizes the need for human genetic diversity and the parallels to conservation of biodiversity outlined in the UN Convention on Biodiversity. It discusses the universal effects of biotechnology and, in particular, the effects of genetic reductionism—noting environmental, social, and other factors affecting human development (Munayyer 1997). Reductionism is recognized as promoting the growing fears of, and potential problems with, genetic testing and GLM, and to this end eugenics is strictly regulated. The declaration also extends to genetics the right to freedom from discrimination and the right to privacy promised in the UDHR (Boris, et al. 1997). Underlying the declaration's approach is an implied recognition of "an intrinsic right of human biodiversity" (Munayyer 1997).

The most significant omission of the declaration is the failure to discuss the rights of future generations. In question is the conflict between the right to benefit from science and the right to an unaltered genome (Munayyer 1997). The first right is explicitly part of the Universal Declaration of Human Rights, while the second right can be derived from several articles of the UDHR. Article 3 recognizes the right to "life, liberty and security of person." Article 12 recognizes that "no one shall be subjected to arbitrary interference with his privacy . . . ." Article 22 recognizes the right to the realization of the "free development of his personality." Article 30 states the right to be free from state or personal interference in a person's rights or freedoms. Taken together, a case can be made that the manipulation of a child's genome beyond correcting for serious potential medical problems is a violation of the future child's rights. The debate over the rights of the unborn child clearly mirror the abortion debate. However, as mentioned earlier, because of the heritability aspect to GLM, the rights in question are not just those of the child, but also those of his or her descendants.

Conclusion

In recent years the UN has begun to address many of the hard questions raised by biotechnology. Although the focus here has been on human rights, the UN has also taken steps to regulate other potentially harmful aspects of biotechnology, particularly potential damage to the ecosystem. Room for further regulation certainly exists but must be balanced carefully with fears of stifling the potential benefits of this new technology. The potential harm of eugenics and GLM justify continued suspicion of new advances in technology. However, rather than ban the use of this technology outright, the UN must continue to study it in order to develop regulations that accurately reflect its pros and cons. The UN must also continue to redefine human rights in terms of the evolving technology. Although the rights of indigenous peoples have been a focal point of early human rights concerns, the Universal Declaration on the Human Genome and Human Rights accurately points out that biotechnology will affect all humanity.

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"Injustice anywhere is a threat to justice everywhere."

Martin Luther King Jr. 1929–68

Human Rights in These United States

Do Americans understand human rights?

Lyn Beth Neylon

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What do you think of when you hear the phrase "human rights"? Most Americans view human rights as something of concern only in other countries but are unaware of what human rights are and why they are relevant in the United States. Human rights are the rights everyone has simply because he or she is human. Human rights do not have to be earned. These fundamental rights belong to all people regardless of who they are or where they live. They are not given by documents or governments, although documents help us define human rights, and governmental action can protect or violate human rights. People are equally entitled to human rights.

Human rights are universal, although there is some diversity of opinion about the theoretical basis for them. Some people think human rights are given by God; some people think we have human rights because we have collectively agreed to abide by generally accepted principles of fairness and justice.

Although the idea of human rights has been around for thousands of years in the world's many societies, religions, and philosophies, the first articulation of a global consensus on human rights is found in the Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, by the United Nations. This declaration was proclaimed as a "common standard of achievement for all peoples and all nations" and is the basis for many regional and global human rights treaties, which are legally binding, that have been developed in the past 50 years. Two such treaties were written to define many of the rights set out in the UDHR: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. With them, international human rights law was born.

Since the UDHR was adopted, the composition of the United Nations has changed and has become much more representative of the countries and perspectives of the entire world. There have been many international conferences held to debate, in these more inclusive and democratic forums, the universality of rights and the content of human rights. Over and over, the concept that human rights are universal and belong to all of us has been reaffirmed.

See the Teaching Strategy for this article on page 43.

What Do Americans Think About Human Rights?

On December 10, 1997—Human Rights Day—Human Rights USA, a human rights education initiative, announced the findings from a national survey entitled "Report Card on Human Rights in the USA." The survey, conducted by Peter D. Hart Research Associates in Washington, D.C., was commissioned by Human Rights USA to find out what Americans know and think about human rights issues in the United States. Respondents were "average Americans," from 16 to over 65 years old, professionals and laborers, homemakers and retirees, managers, students, and the unemployed, at all income and educational levels, mostly self-identified as white (non-Hispanic/Latino) or black/African American, in cities, small towns, suburbs, and rural areas. The results were extremely interesting.

Generally people did not know about official human rights instruments—only 8 percent of adult respondents and 4 percent of teens could name the Universal Declaration

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of Human Rights as a document that sets out agreed-upon human rights for everyone worldwide. Human rights, as articulated in the UDHR, encompasses a wide range of basic civil, political, economic, social, and cultural rights. Although the United States helped write and strongly supported the UDHR 50 years ago, that broad conception of human rights is not how Americans typically understand human rights issues in the United States.

Economic, social, and cultural rights are not guaranteed in the U.S. Constitution, and most people do not learn or even talk about these rights in school. However, the survey findings do indicate that there is a great deal of concern with economic and social justice issues in the United States, and that sometimes these are understood as human rights issues. The problems that stand out to most people as violations of human rights include police brutality, racism, discrimination against lesbians and gay men, poverty, homelessness, and hunger.

Not surprisingly, very low-income Americans are more likely than those with more money to understand poverty as a human rights violation. This finding was mirrored in focus groups commissioned by Human Rights USA. The low-income group members were very aware that their rights were being violated, that human rights does not only mean something that happens abroad in totalitarian governments but also applies to them, and that something needs to be done here at home to address human rights problems. But the survey showed that poor people were not the only ones with this understanding.

A Human Rights Report Card

A majority of people polled (52 percent of the total, including 74 percent of African Americans and 56 percent of Latinos) said that the United States has a "very serious" or "fairly serious" human rights problem. What, then, do people mean when they talk about human rights, and what are our human rights problems? In response to the question "if you were giving the United States a report card on how we are doing" on current social issues, the United States received a grade of C to D+ overall in the areas of access to quality education and affordable health care, treatment of women on the job, and environmental protection; and a significant majority feel we do a mediocre job at best on these human rights issues. (See chart above.) Three in four Americans said they thought that if the United States founders came forward in time to the present day, they would be disappointed.

Human Rights Report Card

Providing young people with access to a quality education	56 percent gave grades of C or worse (35 percent C; 13 percent D; 8 percent F)
Ensuring equal treatment and pay for women in the workplace	62 percent gave grades of C or worse (36 percent C; 18 percent D; 8 percent F)
Protecting the environment	66 percent gave grades of C or worse (32 percent C; 22 percent D; 12 percent F)
Helping people in poverty	67 percent gave grades of C or worse (37 percent C; 22 percent D; 8 percent F)
Combating racism and prejudice	74 percent gave grades of C or worse (41 percent C; 22 percent D; 11 percent F)
Providing access to affordable health care	76 percent gave grades of C or worse (31 percent C; 27 percent D; 18 percent F)

Why Do the Survey?

Human Rights USA sponsored this nationwide survey of Americans' attitudes toward and knowledge of local and national human rights issues because the responses to the questions will give community activists, educators, and decision makers fresh information with which to approach local and national human rights problems. Also, in planning human rights education strategies, it is important to know to what degree Americans are unaware of human rights issues in the United States, and to what degree they are actually hostile.

The survey was timely, coming a year before the activities and publicity around the 50th anniversary of the Universal Declaration of Human Rights on December 10, 1998. The results give educators a snapshot of how much education needs to be done and whether Americans feel this education is necessary. A future survey would presumably show whether average Americans become any more aware of domestic human rights issues after the UDHR's anniversary and human rights education efforts by Human Rights USA and organizations such as Amnesty International, whose campaign for the next year focuses on human rights abuses in the United States.

In the United States today, there are mighty contradictions. Some people

St. Louis Coalition for Human Rights

The St. Louis Coalition for Human Rights was formed in 1997, with support from Human Rights USA, to provide education about human rights issues in St. Louis. The coalition consists of over 50 organizations and individuals. The Coalition's Human Rights USA campaign to "Bring Human Rights Home" includes rallies, marches, workshops, conferences, protests, petition drives, forums, and radio and television public affairs programs—innovative ways to show people that human rights issues are the social justice issues that are in our own backyards.

The St. Louis Coalition for Human Rights has sponsored or participated in numerous human rights programs and events in the St. Louis area. For example, the coalition sponsors weekly media briefings, called the St. Louis Human Rights Report Card, which researches and brings to light how the city's practices and policies fare on guaranteeing the human rights listed in various articles of the Universal Declaration of Human Rights. The coalition jointly released an important document "National Priorities Report: The St. Louis Story" with other local social justice and human rights groups.

The coalition co-sponsors cultural events such as Esperanza, a human rights creation of dance movement, and public policy events such as the "Criminal Justice 2000: New Vision vs. the Rage to Punish" conference and the "Workers' Rights Are Human Rights" public hearing in observation of the National Day of Action for Welfare/Workfare Justice. To raise the awareness of elected officials and promote accountability, the coalition initiated the development of human rights surveys, which were sent to legislators to reveal their voting records and opinions on important local human rights issues. And to keep the community informed, the coalition publishes and distributes a monthly calendar of human rights events and activities.

Since schools are an important part of the St. Louis community, the coalition has a school-based component to focus on more formal human rights education. The coalition has created a Speakers Bureau, which makes available speakers on local and national human rights issues. It has also started an education station to display and loan human rights educational and instructional materials and has conducted or sponsored human rights training for teachers, young people, and community-based organizations.

have great wealth, while others struggle in poverty or economic uncertainty. Some have tremendous opportunities, while many have diminished choices because of persistent racism or other kinds of discrimination or limited economic means. Many young people in this country go to college, but many students can't read and are faced with danger or neglect in their schools every day. Some Americans have the best health care in the world, but many in this country have no health care at all or no affordable care. With one of the world's highest standards of living, we also see people who are homeless or who live in substandard housing with no heat or clean water. It is time for us to analyze our problems in a new way and to see them with a fresh eye so that we can move toward solutions.

Human Rights USA wants people to use the survey as a starting point for, or to continue with, human rights education in their communities, in their schools and workplaces, and everywhere that important social justice issues are discussed.

The Value of Survey Results

The survey results give accurate data about what Americans really know and think as opposed to the picture that politicians and the media suppose or report about what Americans know and think. The conclusion that these are not the same is inescapable, given the answers people gave.

For example, at the height of the push for the Republican Party's "Contract With America," many politicians pushed their agenda for less government action and money for social justice issues. However, 54 percent of the people polled thought that elected government officials should take the greatest responsibility for upholding and protecting people's human rights in the United States, with another 14 percent volunteering that the government, individuals, civic and community groups, law enforcement, organized religion, businesses, and the media should take equal responsibility. People did not seem to support the idea of the government abdicating its responsibility to defend people's human rights in the quest for individual responsibility.

Survey results contradict other political and budgetary choices our politicians have made. Many elected officials, supposedly representing their constituents' views, worked to defeat a plan for comprehensive health-care coverage. Did they understand that their efforts were contrary to the survey's findings that, on average, Americans give the United States a D+ in providing affordable health care? In the midst of welfare reform discussions in which politicians blame low-income families for their poverty, do they know that over half of Americans consider poverty a human rights violation and that when asked what groups

don't get fair treatment in the United States, almost two-thirds of Americans responded that poor people are usually discriminated against?

The survey results are valuable because they expose the disconnection between what average Americans think on human rights issues and the choices that are being made in their name by those who represent them in Congress and the White House. It also gives us information about what people's priorities are, and whether human rights education is valuable. Fully 87 percent of those polled agreed that "educating people about human rights issues is necessary to ensure that [all people] know what their rights are and what they can do to protect those rights" is a very strong or fairly strong reason for why we should do more in the United States to uphold human rights for all members of our society.

When asked how fast we should move on human rights problems here in the United States, given the many challenges facing the country, three quarters (76 percent) of all adults (83 percent of African Americans) felt we should put human rights near the top of our priorities or try to make regular progress on human rights problems, rather than move slowly or let solutions "evolve naturally." Given this mandate, local, state, and national governments should consider and debate whether the laws and regulations they vote on violate people's human rights and start representing their constituents' concerns and priorities on these issues. School boards, administrators, and educators should respond to the urgent need for human rights education in schools. Civic and community organizations, to better address community concerns, should incorporate an understanding of human rights into their already-existing programs. The media need to educate themselves about the human rights aspects of the stories they cover and highlight the issues that Americans have said they care about. ♦

Who Is Human Rights USA?

Human Rights USA is a human rights education project, financially supported by the Ford Foundation, with additional support from The Stanley Foundation and West Publishing Company, a division of International Thomson Publishing (ITP). Human Rights USA is implemented by four partner organizations: Amnesty International USA Human Rights Educators' Network, the Center for Human Rights Education, the University of Minnesota Human Rights Center/Minnesota Advocates for Human Rights, and Street Law, Inc. The purpose of Human Rights USA is to reach educators, young people, social justice activists, advocates, and the general public to achieve a new level of awareness and understanding about the meaning, scope, and relevance of human rights in the United States and to foster action to guarantee these rights. Human Rights USA provides school-based and grass-roots human rights education and gives technical assistance to community social justice organizations, religious groups, educators, and schools. Survey results, as well as other documents, information, links, and updates can be found on the Human Rights USA Web site (www.hrusa.org); and curricula, lesson plans, teacher's kits, training guides, UDHR "passports," and other materials are available at the Human Rights USA Resource Center (call toll-free at 1-888-HREDUC8).

CEDAW Articulates Women's Rights

"In a society where the rights and potential of women are constrained, no man can be truly free. He may have power, but he will not have freedom."
Mary Robinson, UN High Commissioner for Human Rights

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides a universal definition of discrimination against women. The treaty's 30 articles articulate specific rights to which all women are entitled, and the treaty obliges states to take concrete steps to eliminate discrimination against women. Some of the major provisions are summarized below.

- CEDAW defines "discrimination against women" as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their martial status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field."
- Unlike other human rights treaties, CEDAW does not solely address actions by the state or its agencies. CEDAW obliges states to take all appropriate measures, including legislation, to eliminate discrimination against women by any person, organization, or enterprise.
- CEDAW allows states to take temporary special measures aimed at accelerating de facto equality between men and women. These special affirmative action measures are to be discontinued when the objectives of equality and opportunity have been achieved.
- States are required to suppress all forms of traffic in women and exploitation of prostitution.

Source: Kathryn A. Tongue, "CEDAW Provisions Wide-Ranging," Human Rights *(Summer 1998) 25.3: 15.*

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Children's Human Rights

What impact can international children's rights have?

Roger J. R. Levesque

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Conceptions of children's human rights have taken a decisive turn. Children now possess the basic civil, political, economic, and social rights traditionally reserved for adults. Although human rights law now views children as holders of human rights, the developments have not eradicated familiar controversies. Indeed, children's rights are more controversial than ever as they necessarily challenge how institutions and individuals treat and view children. The most pressing concerns involve the need to debate and resolve three fundamental questions: What is the nature of children's rights? How radical are the rights? How can they impact children living in the United States?

The Nature of Children's Human Rights

Over 80 international legal documents concern the special status of individuals under the age of 18, "children." The current international statement of their rights finds its most comprehensive expression in the United Nations Convention of the Rights of the Child ("convention"). This convention takes important steps in identifying the nature of children's rights.

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The convention is best understood in light of its aim. It seeks to give priority to children in the adoption of individual countries' polices that aim to bestow upon children greater rights. This aim is well reflected in the adoption of the convention's three guiding principles. First, children need special legal protection beyond that provided to adults. Second, the ideal environment for a child's survival and development is generally within a protective and caring family setting. Third, governments and private citizens, including parents, should respect and act in the best interests of children.

The convention enumerates the three principles more specifically through several categories of rights. The categories are health rights (including adequate standard of living, social security, basic survival, and health care); political and civil rights (including right to life, freedom of thought, conscience and religion, association, expression, nationality, prohibition against state discrimination and illicit abduction, minority rights education, access to information, protection from harm and exploitation); legal process rights (including civil and criminal procedural rights, prohibition against certain punishments, and periodic review of placements); humanitarian rights (protection during armed conflict and refugee rights); and family rights (parental obligations, the right to know and be cared for by parents and maintain contact with parents, and the basic right to a family environment). These categories expansively define children's rights under international law and, by doing so, require countries to also define and respect children's rights.

See the Teaching Strategy for this article on page 47 and the case study on page 33.

The Convention's Radical Departures

Children's rights as conceived in human rights law have been viewed as revolutionary. Comparing them to the rights of children in the United States helps us understand how significant and revolutionary the human rights really are. Four examples illustrate how the convention is different and groundbreaking.

First, the convention gives control of rights to children themselves rather than giving them to adults who care for children. For example, the convention places children's rights to relationships in the child, rather than in the parent or state. Countries have the obligation to "respect the right of the child to preserve his or her ... family relations" (Article 8). States further must respect the "right of the child ... to maintain personal relations and direct contact" with parents from whom the child has been separated

(Article 9). The Supreme Court has concluded the opposite and found that neither natural parents nor their children have a constitutional right to maintain relationships with each other.

Second, the convention's visions of family life sharply differ from the Supreme Court's view of families. For example, the Supreme Court has refused to intervene in family life and protect what would otherwise be a child's right to privacy. Cases suggest that, under U.S. law, although children may have rights to privacy, they have limited authority to exercise that right. The Constitution permits states to have children assert their claims only through parents. The issue may have been resolved differently under the convention because it entitles children to rights even when the rights are tied to family relationships, particularly to parents. For example, although the convention does not deal with the issue of abortion, it clearly aims to give children privacy rights (Article 16) and decision-making authority to exercise those rights, commensurate with the child's development (Article 12). The potential impact of these two articles is likely to be revolutionary: it allows for the creation of an "adolescent jurisprudence" currently absent from U.S. law, policy making, and academics.

Third, even more radical than entitling children with rights is the convention's vision of state involvement in family life. The convention envisions a society that actively supports children and families. The ideology of family life envisioned by the U.S. Constitution is one that protects family integrity by a principle of state noninterference, barring caretaker criminal abuse or failure to realize basic responsibilities. Thus, if parents do not abuse their children, the state does not intervene. Under the convention, there arguably would be more opportunities for intervention in families in order to support children's rights.

Fourth, the convention adopts an approach to rights that moves beyond the United States' approach. The convention aims for higher standards than the rights the Constitution presently protects. Among the children's issues already addressed by the Supreme Court that would need to be reconsidered are the following: freedom of expression; freedom to seek, receive, and impart information; practice own religion; special treatment in juvenile penal codes, including detention of juveniles; education; protection from corporal punishment; to be heard in proceedings; protection from child abuse and neglect; housing; and association and social development. The convention imposes duties of a positive nature as it moves away from simply imposing duties that can be substantially fulfilled by government inaction. Admittedly, these "positive rights" are to be achieved more progressively through programmatic implementation; compliance with the convention remains more than a matter of establishing programs. Compliance means that steps have been taken to implement effective programs. Again, the convention requires countries to respect and ensure all of the enumerated children's rights. Importantly, even though some states in the United States arguably have moved toward ensuring children's rights in a manner consistent with the convention's aspirations, it would be difficult to conclude that current state constitutional and legislative provisions actually comply with the aspirations.

Impacting U.S. Law and Policy

Even though children's rights may be recognized, it does not necessarily follow that they will be enforced. A critical issue, then, involves the extent to which the international community that conceived the notion of children's human rights will push countries to accept the rights and actually implement them. In terms of the impact on the United States, the extent to which international children's rights can change the place of children in law and policy has been the subject of considerable controversy. Several assume little impact; others argue that it is a revolutionizing force. One way to understand the debate is to understand the two different ways international law may be implemented in the United States. The different approaches lead to different conclusions.

The Narrow View of Impact

The more narrow approach to thinking about the impact of international law takes the traditional view of how international law works. From this perspective, international law binds countries through formal and informal ratification. Formal ratification involves signature of the President upon the advice and consent of the Senate (U.S. Const. Art II. s.2 cl.2). Although that process seems quite simple, several limitations may be placed on the treaties and narrow their eventual impact. First, the treaty must be "self-executing;" that is, a treaty binds domestic courts only if Congress has passed legislation for the specific purpose of implementing the treaty provisions domestically. Second, limitations arise to the extent that the treaty may conflict with existing law. For example, if the treaty conflicts with state law, then the treaty prevails; if it conflicts with federal law, the most recent provision rules; lastly, if the treaty conflicts with the Constitution, the treaty loses. Third, potential limitations arise when the ratification process results in reservations and other devices that clarify the extent of the obligation the ratifying state views itself as undertaking. Formal ratification, then, actually involves specific rules that result in relatively clear outcomes. The outcome that has been envisioned has been that the convention would have little impact because of the several limitations the United States would likely put into place.

Teen Status in Washington State Courts

When common law was the only law, children under the age of 21 were considered to be "chattels," or property, and were accorded no rights independent of their parents. Parents were entitled to take all the money that their "children" might earn. In 1906, a court in the state of Washington held that a person under 21 became subservient to the authority of his parents following his discharge from the army, and they were legally entitled to his earnings.

Common law allowed parents to bring an action for the monetary "injury" of their child that resulted from the child's inability to work because of an action by a third party. Recovery, or the measure of damages, was limited to the loss of the child's service in the workplace. The hiring out of children under 21 was a common practice, at least in Washington state, where, in 1903, the legislature limited the employment of minors in certain situations.

Washington law firmly established the proposition that parents were immune from civil lawsuits initiated by their minor children. In *Roller v. Roller*, 27 Wash. 292, 79 Pac. 188 (1905), a father was convicted of raping his minor daughter, but the court denied the daughter's claim for civil penalties based upon the common law rule prohibiting minors from suing their parents.

"With reference to a blood parent ... all such litigation seems abhorrent to the idea of family discipline, which all nations, rude or civilized, have so steadily indicated, and the privacy and mutual confidence, which should obtain in the household," the court said. The court continued, adding that, an "unkind and cruel parent may and should be punished at the time of the offense" by forfeiting custody and suffering criminal penalties, but for the minor who continues to live at home to bring a suit against a parent "appears quite contrary to good policy. The courts should discourage such litigation."

Another court, this one in Mississippi, said that the peace of society and of the families composing society forbids minors from appearing in court to assert their civil rights if those rights were taken from them by their parents.

But Washington state changed its legal views in 1952 when a court decided that a child could sue a parent for an intentional tort as well as for negligent acts that did not involve parental authority. Parents were still entitled to custody and control of their children, however, and parental authority to restrain their children was well recognized.

While children were not able to sue their parents for injurious acts until 1952, these limits on parental power arose from an earlier case, *Heney v. Heney*, 24 Wn. 20 445, 459, 165 P 2d 684 (1946), in which a court ruled that it was in the state's interest to enable minors to grow up to be "worthy and useful citizens." Much earlier, in 1905, Washington state created a special court to deal with juvenile delinquents. Court jurisdiction was soon expanded to include dependent, abused, or abandoned children. This court had broad authority to take children into custody and commit them to institutions without distinguishing between offenders and dependent children. Children could be committed to a place of detention or confined to an institution until the age of majority. Legal protections for children were minimal at best.

The use of mental hospitals for children was, at that time, rare because children were seen to be simply acting as children, and mental health disorders were thought to occur only in adults. Washington law did not really address juvenile mental health issues until 1949 when it allowed the commitment of a minor to a mental institution by a parent without the minor's consent. In 1977, the law was amended to increase due process protection for minors. Only children under the age of 13 could be committed to a mental hospital without the children's consent. Children age 13 and older were given the same due process protections as adults.

Washington state took steps to restore parental commitment authority in 1995, following the brutal beating death of a young chronic runaway and drug addict. The legislature enacted the "Bocca Bill" to enable parents to commit their children to secure treatment facilities for necessary mental health or substance abuse. In *State of Washington v. CPC Fairfax Hospital*, No 634389-4 (June 26, 1996), the Supreme Court of Washington state, however, ruled that, notwithstanding the law, the involuntary treatment of minors 13 and over in secure treatment facilities will not be permitted without judicial oversight.

The editors wish to thank the office of the attorney general of Washington state for furnishing the information for this sidebar.

Traditional international law also involves the domestication of treaties through informal "ratification." That process makes use of customary law. The legal rule regarding this form of law is simple: If law is customary, it is "part of our law." However, the scope of this use of international law remains rather limited. The Supreme Court urges lower courts to turn to customary law when there is no treaty and no controlling executive or legislative act or judicial decision. Yet, even the Court's own use of customary international law remains inconsistent. In important children's rights cases, for example, it turned to customary norms to interpret the Eighth Amendment as prohibiting execution of a minor under the age of 16 only to ignore such standards for a similar issue one year later. Given the conflicting outcomes of this use of human rights law, the general conclusion again is that the children's convention would have little impact on U.S. law.

The Broad View of Impact

Modern international law accepts limitations of ratification processes and finds ways around limits that states attempt to impose on their obligations to the international community and their own citizens. These alternative methods actually may lead to changes in the United States' approach to children's rights. Three methods to circumvent traditional limitations placed on the ratification process illustrate the potential impact of international treaties. Under this approach, the convention could and should have more impact on U.S. law and policy.

The first method deals with the use of executive and administrative discretion. The rule that deals with self-execution of treaties has been designed for judges. In theory, a non-self-execution declaration does not apply to the executive branch of government. This leaves open the issue of whether executive and administrative officials whose work is affected by treaties must follow the judiciary's "non-self-executing" rule. Nonjudicial use of international standards is significant for four major reasons. First, the executive branch is free to enter into agreements that, as federal law, prevail over inconsistent state law by reason of the Supremacy Clause. Thus, both states and the federal government would be bound by the executive agreement unless the federal legislature or executive branches decided to enact new rules. Second, statutes and regulations necessarily leave considerable discretion to those entrusted with their implementation. The practical result of this view suggests that thousands of national and local decision makers who have discretion to enforce, interpret, and implement laws could be encouraged to administer laws in a more progressive manner consistent with the convention. This would impact, for example, prosecutors, welfare officials, principals, doctors, lawyers, psychologists, and those who have direct impact on children. Third, the convention's Article Four holds that "States Parties shall undertake all appropriate legislative, *administrative*, and other measures, for the implementation of the rights recognized in this Convention" (emphasis added). The convention's own language, then, mandates the use of alternative methods. Lastly, the convention places obligations on private parties. Admittedly, the link between international treaties and private parties is not necessarily direct, but the convention requires countries to place obligations on private parties, and modern international law increasingly creates methods to hold private parties accountable. Importantly, in some instances, governments must recognize children's rights directly and play down the traditional role caretakers have in controlling children's legal rights.

The second method to circumvent attempts to define narrowly the United States' obligations is to recognize an important development in human rights law—the focus on monitoring. The United States, like all other ratifying parties, cannot avoid the obligation to publicize, report on, and monitor the enforcement, and failures of enforcement, of all rights found in the convention (Articles 42 & 44§6). In this regard, ratification necessarily opens the United States to domestic and international scrutiny based on agreed international norms. The power of the global community derives from a surprisingly broad base. Formal quasi-governmental organizations with a global reach, such as the World Bank, tremendously impact the lives of families and children. Likewise, nongovernmental organizations forcefully mobilize interest in children's human rights. International professional organizations also play important roles in that they help discover, define, and influence the public reaction to social issues. Lastly, private citizens increasingly form local social movements that ultimately have global repercussions: the reach and activism of the Children's Defense Fund provides a powerful case in point. Thus, although a cooperative and educational approach to enforcing international law may seem to be a rather weak and unsophisticated method of enforcement, it is a major weapon in the struggle to ensure human rights. Human rights treaties seemingly function best indirectly, through pushing, prodding, and even embarrassing states that fail to take steps to guarantee the proper implementation of rights.

The third method to circumvent limitations set in the ratification process deals more directly with the nature of those limitations as applied to international obligations. Reservations and other limiting additions to treaties do not affect the treaty in terms of obligations to foreign parties. This is critical for two reasons. First, states that are parties to the convention must act in "good faith" and implement its core values and standards, an

obligation that arises with any ratification. Second, human rights are *erga omnes:* all states, all world citizens, have an interest in their recognition and enforcement. This point is of significance in that the interest goes beyond making rights judicially enforceable; rights are to be enforced and recognized in other arenas of law making. Thus, although the black letter obligations set forth in the convention may not impose direct obligations on the United States or subject it to foreign jurisdictions, the rights enumerated in the convention are, nonetheless, rights that countries now view as those in which every state and world citizen has an interest in recognizing and enforcing. It would be unwise to discount the power of such rights, as reflected by calls to enact treaties that would have universal jurisdiction and reach rights violators essentially anywhere in the world.

Conclusion

The convention was meant to be, and undoubtedly is, a milestone in a global strategy that aims to change our attitudes toward children and families. The convention urges us to rethink current policies marked by contradicting visions about the proper role of children's voices, parents' authority and obligations, and state's responsibilities in matters concerning children. That fundamental mandate is the most critical contribution the convention offers those interested in changing the place children occupy in our society.

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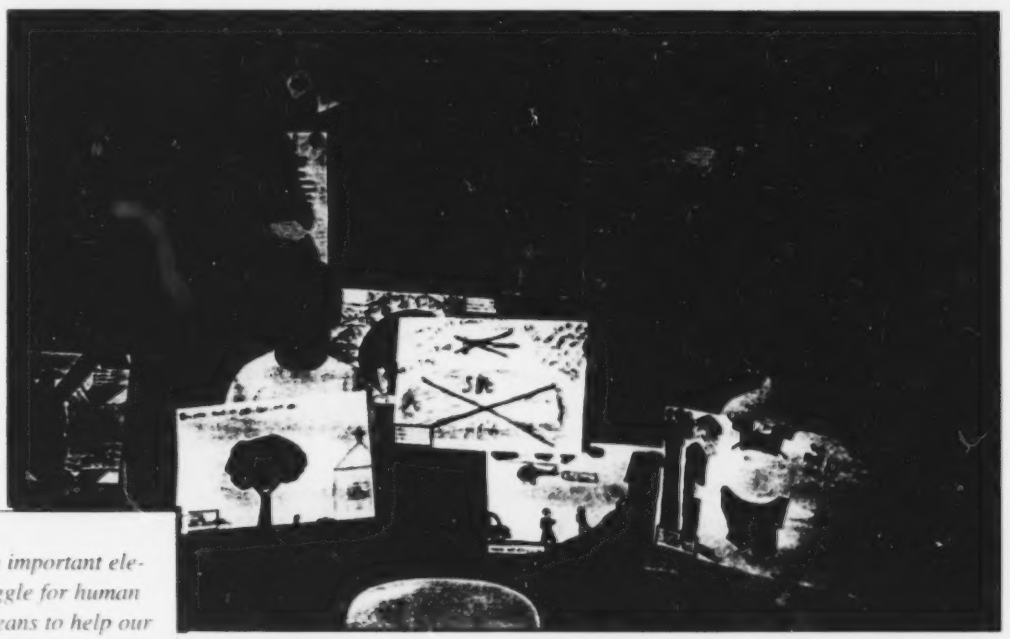

Courtesy of University of Minnesota Human Rights Center, Minneapolis.

"Education is an important element in the struggle for human rights. It is the means to help our children and people rediscover their identity and thereby increase self-respect. Education is our passport to the future, for tomorrow belongs to the people who prepare for it today."
Malcolm X, 1925–65

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Human Rights and the Law—Terms to Know

Throughout *Update on Law-Related Education*, you have been introduced to terms related to human rights and the law. Match each item in Column A by writing the letter of the item on the line by the definition in Column B.

Column A		Column B
a. covenant	_____	**1.** the process by which the legislative body of a state confirms a government's action in signing a treaty
b. humanitarian law	_____	**2.** citizens' rights to freedom to worship, to express themselves, to vote, and to have access to information
c. International Bill of Rights	_____	**3.** established a full range of civil, cultural, economic, social, and political rights for children
d. civil and political rights	_____	**4.** a binding agreement between states; also called a convention and treaty
e. signatory states	_____	**5.** the international rules that establish the rights of combatants and noncombatants in war
f. inalienable rights	_____	**6.** people's right to food, shelter, and health care, for example
g. social and economic rights	_____	**7.** the combination of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights
h. ratification	_____	**8.** rights that belong to every person and cannot be taken away under any circumstances
i. codification	_____	**9.** the process of bringing customary international law to written form
j. Convention on the Rights of the Child	_____	**10.** countries that have signed a treaty, convention, or covenant

See answers on page 63.

Are (Should) Human Rights (Be) Universal?

Roger J. R. Levesque

Update on Law-Related Education, 22.3, 1999, pp. 28, 30. © 1999 American Bar Association.

Why Cultural Life Still Matters to Human Rights Law

Current world situations reveal more than rights abuses and challenges to human rights. They also reveal cultures in conflict. Cultural conflicts are exemplified by the frequency with which countries are accused of violating human rights and, just as importantly, the resistance to ratifying and embracing key human rights treaties. The legitimacy of resisting international human rights may be controversial, but it is difficult to dispute that the resistance does not arise from perceptions of how the world should be and the place of individuals within that world. In essence, resistance to human rights principles derives from cultural views of life.

The Nature of Debates

Conflict and resistance to the imposition of foreign ways of life always have plagued human rights law. The stance tends to be framed in terms of the need to seek either a universal or relative standard of how countries should treat their citizens and how people should treat one another. For example, universalists propose that universalism only deals with a small core of violations and leaves intact legitimate cultural practices. Relativists argue that leaving legitimate practices intact may require also leaving intact a small core of violations and, more importantly, that those violations are not necessarily violations of human rights as conceived by the host culture. As they approach human rights, universalists examine how other societies already possess basic human rights that simply need further expression or reinterpretation. By doing so, universalists generally champion a positivist approach suggesting that any biases found in the dominant human rights paradigm may be tempered by empirical research, which will confirm the universality of core human rights. Relativists, on the other hand, affirm that universal truths actually vary among societies and that positivistic, empirical paradigms fail to uncover truths obvious to other societies. Universalists argue that human rights demand changes in cultural practices, while relativists argue that the structure of modern human rights recognizes the need to respect tradition and cultural practices. Relativists also frequently argue that the world benefits from diversity. They argue that differences in need of remedies have arisen from Western colonialism and exploitation that require special measures and extra protections. In addition to these different approaches, the debate often offers a very different view of individuals. Universalists argue that people are autonomous individuals whose rights are to be respected because of their individuality; relativists argue that people are understandable only in contexts, and their contexts may require respect just as much as their alleged individuality. The differences are numerous and extend in numerous directions. Bluntly stated, however, the debate tends to be framed in terms of respect for Western individualism with its focus on civil and political rights or respect for non-Western collectivism with its concern for social and economic rights. All of these concerns are now framed in terms of the need for more respect for the dominant values espoused by the North, industrialized countries or for those from the South, developing countries.

> *"The defense of human rights is a clear path toward the unification of people ... and ... the relief of suffering."*
> *Andrei Sakharov, 1921–89*

The Need to Recognize Changing World Conditions

Holding to either extreme of debates about universalism and relativism ignores several realities. Western norms of individuality and morality are as diverse as norms found in non-Western cultures. Characterizations of the West as the bastion of individualism are somewhat misleading. Several point to the tendencies that pull autonomous people back from their isolation into social communion. Likewise, conceptions of Western rights do not focus solely on autonomy. The United States has extensive social and economic rights, such as welfare, social security, Medicare, student loans, and tax breaks to wealthy individuals. Likewise, many in the West are critical of liberal individualism: Feminist writers have emphasized the prevalence and importance of communalism, both in interpersonal relations and civil society.

Even though human rights language may derive from Western sources, it no longer remains solely Western. In fact, such a wide range of human rights concepts have been invoked that no particular culture or political group can claim that its understanding and interpretation of those

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Are (Should) Human Rights (Be) Universal?

Rhoda E. Howard

Update on Law-Related Education, 22.3, 1999, pp. 29, 31–32. © 1999 American Bar Association.

Human Rights and the Necessity for Cultural Change

Many critics of the concept of human rights argue that it undermines indigenous cultures, especially in the underdeveloped world (Cobbah 1987, Pollis and Schwab 1980, Rentoln 1990). I agree that the concept of human rights often undermines cultures. Culture rupture is often a necessary aspect of the entrenchment of respect for human rights. Culture is not of absolute ethical value: if certain aspects of particular cultures change because citizens prefer to focus on human rights, then that is a perfectly acceptable price to pay.

Human rights are rights held by the individual, without regard to status or position, merely because she or he is human. In principle, all human beings hold human rights equally. These rights are claims against the state that do not depend on duties to the state. They are also claims that the individual can make against society as a whole. Society, however, may have cultural preconceptions that certain types of individuals ought not to be entitled to such rights. Thus, culture and human rights come into conflict. The concept of cultural relativism recognizes this but does not consider the possibility that, in such instances, perhaps the better path to choose is to change the culture in order to promote human rights.

Cultural relativism is a method of social analysis that stresses the importance of regarding social and cultural phenomena from the "perceptive of participants in or adherents of a given culture" (Bidney 1968). Relativism assumes that there is no one culture whose customs and beliefs dominate all others in a moral sense. Relativism is a necessary corrective to ethical ethnocentrism. But it is now sometimes taken to such an extreme that any outsider's discussions of local violations of human rights are criticized as forms of ideological imperialism.

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Cultural Absolutism

In effect, this extreme position advocates not cultural relativism but cultural absolutism (Howard 1995). Cultural absolutists posit particular cultures as of absolute moral value, more valuable than any universal principle of justice. In the left-right/North-South debate that permeates today's ideological exchanges, cultural absolutists specifically argue that culture is of more importance than the internationally accepted principles of human rights.

Cultural absolutists argue that human rights violate indigenous cultures because they are Western in origin. But the origins of any idea, including human rights, do not limit its applicability. The concept of human rights arose in the West largely in reaction to the overwhelming power of the absolutist state; in the Third World today, states also possess enormous power against which citizens need to be protected. As societies change, so ideals of social justice change.

Cultures are not unchanging aspects of social life, ordained forever to be static. Cultures change as a result of structural change: secularism, urbanization, and industrialism are among the chief causes of cultural change both in the West since the 18th century and in the underdeveloped world today (Howard 1986). Cultures can also be manipulated by political or social spokespersons in their own interests. Culturalism is frequently an argument that is used to "cover" political repression, as when Kenyan President Daniel arap Moi told a female environmental activist not to criticize his policies because it is "against African tradition" for women to speak up in public.

This does not mean that all aspects of culture must necessarily be ruptured in order for human rights to be entrenched. Many aspects of culture, such as kinship patterns and art or ritual, have nothing to do with human rights and can safely be preserved, even enhanced, when rights-abusive practices are corrected. Many aspects of public morality are similarly not matters of human rights. The proper degree of respect one should show to one's elders

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guarantees is exclusively the fundamental one. In addition, numerous indicators suggest that a new transnational legal culture is developing. That trend is witnessed, for example, in the new wave of national constitutions that incorporate international law into domestic law and judicial practice.

Societies are no longer insular entities. It would be naive to ignore the wide variety of external forces that influence countries and societies. The theory and practice of international relations now focus on individuals, groups, institutions, and transnational actors that exert different pressures on local, national, and international governments. For example, political boundaries lose much of their former significance in the current international economic order. The result is that economic and cultural forces inevitably impact interpersonal relations.

Human rights challenge all cultures. Although several focus on Western efforts to impose Western values on the South, it is important to note that several also notice the failure of Western countries to take certain human rights more seriously. Countries from the North resist rights that infringe on their own cultural values. For example, the United States, arguably the most "Western" and imperialistic country, generally remains hostile to the human rights movement as articulated by recent international developments. The resistance, although couched in terms of national sovereignty, still deals with the domestic application of foreign principles and visions of humanity. Human rights, then, are intentionally imperialistic and their ideals fundamentally challenge the internal workings of all cultures.

Why Culture Still Matters

Culture matters for numerous reasons, as highlighted by a cultural view of human rights and its implementation. A cultural perspective leads to the conclusion that attempts to address human rights violations must consider the impact of abolishing problematic customs and practices, even practices not perceived as overtly problematic. For example, ending certain practices may mean ending a practicing group's existing culture, since cultures construct questioned practices as central to cultural conceptions of human development, cultural participation, and cultural life. Much as several propose, human rights hold the potential to erase cultural diversity.

Individuals only live through their cultures. The import of this maxim is that defining and realizing the rights and duties of human beings and groups toward one another can only be had once individuals possess and exercise the right to live in terms of their own traditions, practices, and general way of life. That recognition is fundamental to human rights law, which places a high respect for cultural rights, which it protects in terms of both individual and cultural sovereignty. Human rights must take into full account individuals as members of their social groups.

Local implementation remains necessary for human rights law to gain and maintain legitimacy. That is, to be effective, human rights must reach cultural and individual consciousness, an often ignored reality in the implementation of international principles. This proposition suggests a need to focus on various levels of intervention that allow for different interpretations and applications of human rights principles. The proposition also reveals a need to focus on understanding legal reforms and how cultures resist challenges.

An understanding of cultural life helps address the three major criticisms against the use of international law. The first criticism is that international law is plagued with ambiguity, creating ample opportunity for differing interpretations and manipulations of those laws. Second, international human rights law does not have a strong international enforcement mechanism to regulate countries' implementation, and that failure invites corruption and nonadherence. Third, international human rights law often fails to overcome allegiances to ancient traditions and customs and runs the danger of replacing one form of dominance with another. Understanding cultural practices leads to a better understanding of how norms discriminate against certain individuals and how international human rights law may gain legitimacy and adherence.

The Need to Reframe Debates

Existing debates frame discussion of human rights in a way that hampers meaningful reform. The tensions and conceptions of cultural life and of cultural rights make more pressing the need to consider ways in which human rights ideals may be internalized and legitimized in various cultures. A cultural view of the debates makes manifest one important issue. Although the debates take place on the more general level of the status of rights and their universal application, the need to remain at that level of discussion is not self-evident. Presumably, and perhaps more fruitfully, the debates could as well take place on a level of substance and interpretation of the rights themselves, such as a right to protection from certain forms of violence (e.g., protection from sexual exploitation, the death penalty, domestic violence). The focus on specific forms of violence makes one realize why culture still matters. In spite of global changes that erase many cultural boundaries, cultural life still largely defines the nature and experience of violence; cultural life also determines the protections offered and the available sources of prevention. A quick look at the experiences of violence within U.S. society makes us realize how violence is embedded in cultural practices. The extent to which the United States resists international human rights principles highlights even more how human rights themselves are culturally contentious and culturally rooted. ♦

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and the proper norms of generosity and hospitality are cultural matters that are not human rights issues. The apparent Western overemphasis on work at the expense of family is also a cultural practice that non-Western societies can avoid without violating human rights. Many other such matters, such as whether criminal punishment should be by restitution or imprisonment, can be resolved without violating international human rights norms.

Weak Cultural Relativism

Jack Donnelly argues that "weak" cultural relativism is sometimes an appropriate response to human rights violations. Weak cultural relativism would "allow occasional and strictly limited local variations and exceptions to human rights," while recognizing "a comprehensive set of prima facie universal human rights" (Donnelly 1989). This is an appropriate position if the violation of a human right is truly a cultural practice that no political authority and no socially dominant group initiates or defends. Consider the case of female genital mutilations in Africa and elsewhere. Governments do not promote these violations; indeed, through education about their detrimental health consequences, they try to stop them. Nevertheless there is strong popular sentiment in favor of the operations among women as well as (if not more so than) men (Slack 1988), although more and more African feminists now oppose these mutilations. Similarly, child betrothal (engaging small children to be married), officially a violation of international human rights norms, is popularly accepted in some cultures (Howard 1986), although again in Africa, many feminists oppose such betrothals. And certain forms of freedom of speech, such as blasphemy and pornography, are deeply offensive to popular sentiment in many cultures, whether or not the government permits or prohibits them.

Although a weak cultural relativist stance is appropriate in some instances as a protection of custom against international human rights norms, to implement human rights does mean that certain cultural practices must be ruptured. One obvious example is the universal subordination of women as a group to men as a group, backed up by men's collective economic, political, and physical power over women. If women have achieved greater access to human rights in North America since the second wave of feminism began about 1970, it is largely because they have challenged cultural stereotypes of how they ought to behave. Feminist activists no longer believe that women ought to be deferential to men or wives subordinate to their husbands. Nor do they any longer hold to the almost universal cultural belief that women's divinely ordained purpose in life is to bear children. Feminists in other parts of the world, such as India or Africa, are making similar challenges to their cultures in the process of asserting their rights. (On women's rights as human rights, see Bunch 1990 and Eisler 1987).

Another area of culture that impedes human rights is social and religious attitudes toward homosexuality. Very few states in the United States protect homosexuals against discrimination in areas such as employment or housing, and there is still a debate about whether homosexuals should be allowed in the military. Other Western countries, such as Canada, allow homosexuals in the military and provide comprehensive human rights protection in housing, education, and employment, but they still do not accept gay marriages. Strong cultural beliefs about the importance of the family and strong religious beliefs about the holiness of matrimony between a man and a woman make it difficult for homosexuals to obtain the full range of human rights. Cultural change—indeed cultural rupture—has been occurring in the Western world and will have to occur elsewhere before homosexuals obtain all the human rights protections they seek.

Arguments Against Human Rights

Many critics find human rights to be overly individualistic; these critics point to the selfish materialism they see in Western (North American) society as evidence that human rights destroy both cultures and communities. But the individualism of Western society reflects not protection but neglect of human rights, especially economic rights (Howard 1995). In the United States, certain economic rights are regarded as culturally inappropriate. A deeply ingrained belief exists that everyone ought to be able to care for himself or herself and his or her family. Since the United States is, or was, the so-called land of opportunity, at least for white people, anyone who lives in poverty is personally responsible for his or her being in that state. Thus the United States has the worst record of provision of economic rights of any major Western democratic state. The right to health is not acknowledged, nor is the right to housing or food. Before such rights are acknowledged and provided in the United States, the cultural belief in the virtues of hard work and pulling oneself up by one's bootstraps will have to be replaced by a more collectivist vision of social responsibility. The culturally ingrained belief that African Americans are inferior people not deserving of the respect and concern of whites will also need to be ruptured.

Critics of human rights sometimes argue that cultures are so different that there is no possibility of shared meanings about social justice evolving across cultural barriers. The many voices of talk about rights preclude any kind of consensus. The very possibility of debate is rejected. Indeed, debate, the idea that people holding initially opposing views can persuade each other of their position through logic and reason, is rejected as a form of thought typical of rationalist and competitive Western society. Western thought, it is argued, silences the oppressed. Yet it is precisely the central human rights premises of freedom of

speech, press, and assembly that over the world permit the silenced to gain a social voice. Human rights undermine constricting status-based categorizations of human beings: they permit people from degraded social groups to demand social change. Rational discourse about human rights permits degraded workers, peasants, untouchables, women, homosexuals, and members of minority groups to articulate and consider alternative social arrangements than those that currently oppress them (for a similar point of view, see Teson 1985).

Human rights are "inauthentic" in many cultures because they challenge the ingrained privileges of the ruling classes, the wealthy, the Brahmin, the patriarch, the heterosexual, or the member of a privileged ethnic or religious group. The purpose of human rights is precisely to change many culturally ingrained habits and customs that violate the dignity of the individual. Rather than apologizing that human rights challenge cultural norms in many societies, including our own, we should celebrate that fact.

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Will U.S. Halt Executions?

"[W]e should mark sharply the far too many places where implementation of the international law of human rights is still tragically wanting. Much remains to be achieved."

Jerome J. Shestack, President, American Bar Association, 1997–98

The United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions issued a report recommending that the United States stop executions until it can ensure that death penalty cases are administered fairly and impartially, in accordance with due process.

The report, released in April 1998, contains the findings of the Special Rapporteur Bacre Waly Ndiaye (Senegal) following a visit to the United States to investigate allegations that the guarantees on the death penalty are not being fully observed in the United States.

During his mission, Ndiaye met with federal officials and visited several states, victims' families, and representatives of nongovernmental organizations, as well as death row inmates. In his subsequent report to the UN Commission on Human Rights, the Special Rapporteur stated that the increase in the use of the death penalty in the United States runs counter to the international trend toward decreasing the number of offenses punishable by death and decisions in many countries around the world to abolish the death penalty.

The report notes that the small percentage of defendants who receive a death sentence in the United States are not necessarily those who commit the most heinous crimes and that many factors other than the crime itself, including race and economic status of victims and defendants, appear to influence the imposition of the death sentence. Those who are able to afford expert legal representation are also less likely to be sentenced to death than those who cannot.

Following the Rapporteur's investigation, the UN Commission on Human Rights adopted a resolution that calls upon countries that still authorize the death penalty "progressively to restrict the number of offenses for which the death penalty may be imposed" and to "consider suspending executions with a view toward abolishing capital punishment."

Source: "United Nations Special Rapporteur Calls Upon United States to Halt Executions." Human Rights *(Summer 1998) 25.3: 12–13.*

Update on the Courts

Case Study: Anti-loitering Laws

Chicago v. Morales

Docket No. 97-1121 (argued December 12, 1998)

Adapted from Preview of United States Supreme Court Cases, *no. 3 (November 20, 1998): 123–26.*

Petitioners: City of Chicago
Respondent: Jesus Morales, et al.

Police may not arrest people until they have committed, or are suspected of committing, a crime. So, in 1992, the Chicago city council responded to an alarming increase in street gang activity by passing an ordinance that made loitering by gang members a criminal offense. Police were thereby allowed to order people whom they believed to be gang members to disperse and leave any given area. Anyone failing to obey the order was subject to up to six months in jail, $500 in fines, and/or 120 hours of community service. Chicago claimed that the violence, drug dealing, and vandalism associated with gang activity intimidated law-abiding citizens to such an extent that people were afraid to walk on their own sidewalks.

FACTS

After receiving a politically significant number of complaints from Chicago voters that gang members, when confronted by police, ceased any criminal activity and stood around not doing anything until the authorities went away, the city council concluded that even when loitering, gangs frightened residents by their intimidating presence. Regulations governing enforcement of the ordinance allowed its use only in areas where gang presence had a demonstrable effect on activities of law-abiding persons in the surrounding community. Gangs were to be identified on the basis of surveillance (they often wore distinctive gang colors or symbols), witness interviews, and tips by informants. When confronted, individual gang members were as likely as not to admit their affiliation.

The challenged ordinance reads: "Whenever a police officer observes a person he reasonably believes to be a criminal street gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of [this law]." *Loitering* was defined as "to remain in one place with no apparent purpose." Bystanders rounded up during the course of enforcement of the anti-loitering ordinance were to be freed upon a showing that they were not members of a gang. In the incident involving Morales, the arresting officer reported seeing him loitering with six people believed to be gang members. The officer ordered them to move on, but when the officer came back a few minutes later, they were still there. The officer then arrested them.

A host of court challenges followed. By 1995, after about 45,000 move-on orders were issued and almost as many arrests made—and after various contradictory rulings were delivered by lower court judges—the Illinois Appellate Court declared that the ordinance was unconstitutional. The second-highest court in the state ruled that the challenged law infringed on the constitutional right of assembly by giving police the power to disperse anyone who associated with gang members in public. The court also held that the ordinance was vague and seemed to be a "transparent attempt" to circumvent the requirement that probable cause be shown prior to an arrest. The city appealed, but the Illinois Supreme Court affirmed the appellate court's decision. In its decision, the state's highest court said that the stricken law was impermissibly vague and failed to give people fair notice of what conduct is prohibited. As used by the city of Chicago, the term "*loitering* ... is inadequate to inform a citizen of its criminal implications." The court also said that relying on a police officer's belief that a person is a gang member called for a subjective evaluation and gave police too much leeway in deciding whether a suspect's conduct violated the ordinance. The freedom to loiter, the court continued, is protected as "one of the amenities of American life."

See the article on page 22 and the Teaching Strategy on page 47.

ARGUMENTS

Now before the Supreme Court, the city has argued that a disorderly collection of persons who are probably

members of a gang and flagrantly display that fact to the public intimidates area residents, detracts from property values, and destabilizes communities. In addition, giving police the power to arrest loitering gang members helps address civil disorder and potentially prevents other crimes.

The ordinance does not infringe the right of association because it is directed only at loitering, defined as "remaining in any one place with no apparent purpose." The ordinance is not at all vague, the city contends, because everyone understands what it means when the police give the order to "move along." Under the ordinance, no arrest should be made until there is first a police order and then a refusal to comply with it—people are told exactly what they must do to avoid arrest. And, the city says, the law violates no constitutional right because there is not a given that people have a right to loiter. It follows, then, according to Chicago, that the ordinance needs only to be rationally related to a legitimate government interest to be constitutional. Expanding upon this line of reasoning, the ordinance passes muster: it applies only to gang members, and even they can loiter alone. They can also loiter with others as long as they move along when ordered to do so. Chicago noted that the ordinance was effective. During 1995, the last year in which it was enforced, gang-related homicide fell by 26 percent, a considerably steeper drop than the 9 percent reduction in the overall homicide rate that year. The following year, without the ordinance, the overall homicide rate was down 4 percent—but the gang-related rate was up 7 percent. Further, 92 percent of gang-related homicides were committed out in the open, where an anti-loitering law might have prevented these occurrences. If fewer gang members are permitted to loiter in public, where they constitute an inviting target for their rivals, fewer of them—and innocent people—will be shot, the city said.

On the other side of the coin, Morales' attorneys contend that the city's ordinance cannot be reconciled with the constitutional right to freedom of movement and association. They said that the loitering law fails to provide a standard by which people may measure their conduct to conform with what is legal. The ordinance also is overly sweeping and arbitrary because it permits immediate incarceration of people suspected of being gang members—not for what they have done but for who they are. The law makes it a crime to look suspicious, according to Morales.

Defendants also argue that the ordinance places an unconstitutional burden on their right to free movement in public places as, they say, is embodied within the guarantee of due process (Fifth Amendment). Accordingly, the city is required to meet the demanding "strict scrutiny" test, which means that Chicago must demonstrate that the ordinance is the least restrictive means possible of advancing a compelling state interest.

SIGNIFICANCE

This case presents a challenge to a widely applied ordinance used by a major city to counter a serious problem. The Court's determination on the constitutionality of that ordinance will provide communities throughout the nation with a ruling on the legality of a major weapon for combating the spread of gang-related crimes. If upheld, this type of law could have a substantial impact on persons who congregate in public for otherwise legal purposes—if a supposed gang member happened to be loitering nearby, for instance. This is a classic case of the polarization between the state's need for law enforcement and an individual's rights.

Universal Declaration of Human Rights

"I believe that we are here to make the world a little more civilized—that there is something unique for all of us to do, that each of us has some mission which we alone can fulfill in accepting our own personal responsibility for the Universal Declaration of Human Rights. This wonderful declaration does not just apply to governments but to each and every one of us. Atrocities done to men, women, and children diminish us all, and we are all responsible for working to change society at home and abroad, to promote the values and ideas enshrined in the declaration."

Mary Lawlor
Director
Amnesty International Ireland

Case Study: Fifth Amendment

Mitchell v. U.S.

Docket No. 97-7541 (argued December 9, 1998)

Petitioners: Amanda Mitchell
Respondent: United States of America

Adapted from Preview of United States Supreme Court Cases, *no. 3 (November 20, 1998): 133–36.*

The Fifth Amendment states that "no person … shall be compelled in any criminal case to be a witness against himself." That is clear enough. It gives people the right to refuse to answer questions that would incriminate themselves. This constitutional provision also prohibits the government or a court from penalizing defendants for invoking the Fifth Amendment privilege during trial.

What is unclear, as a rights issue, is how far this privilege extends. If defendants plead guilty at their trial, for example, may they still use the Fifth Amendment to remain silent at their sentencing hearings? What is or is not admitted during sentencing can mean the difference between probation and years in prison.

FACTS

Amanda Mitchell was indicted for selling five "or more" kilograms of cocaine, sometimes within 1,000 feet of a school. If convicted of peddling between five and 15 kilos of cocaine, Mitchell would have to serve a mandatory minimum sentence under federal law of 10 years in prison. But if she sold more than 15 kilos or had a role in distributing a greater amount of the drug, her sentence could be upped to life.

Mitchell entered a plea of guilty but in doing so reserved the right to contest the amount of cocaine she distributed. The judge accepted the guilty plea and told her that the specific quantity of drugs she was charged with selling would be determined at sentencing; he also told her that she had waived her Fifth Amendment rights by pleading guilty. Mitchell was facing a rather complex range of punishments: a mandatory minimum of 10 years, a maximum of life, a $10 million fine, a mandatory minimum of six years to a lifetime of supervised release, and/or a $200 fine.

Several of Mitchell's codefendants—using a plea-bargain arrangement that she did not or could not use—implicated her in the distribution network. They said that she was a regular courier of cocaine, carrying about two ounces a day, two days a week during an unspecified time frame. Apparently, some of her accusers knew of her activities at some times and others at other times, so the prosecution, using straight numbers, alleged that, over a two and one-half year period, she had trafficked in an amount that added up to a total of 13 kilos. She was, therefore, sentenced to 10 years imprisonment, six years of supervision, and a $200 fine.

On the rights issue, the judge told her, "I held it against you that you didn't come forward today and tell me that you really only did this a couple of times. … I'm taking the position that you should come forward and explain your side of this issue. Your counsel's taking the position that you have a Fifth Amendment right not to. If he's right in that regard, I would be willing to bring you back for resentencing. And … then I might take a look at the [other people's] testimony."

SIGNIFICANCE

A human right, at least in the United States, may also be a civil right—particularly when a person may be imprisoned for something that he or she did not say. *Mitchell* is important to all criminal defendants who wish to plead guilty and yet retain their Fifth Amendment right to remain silent at sentencing. Although the Fifth Amendment protects defendants from testifying against themselves at trial, that protection may or may not extend to sentencing. It is difficult at best to claim a constitutional right to not incriminate oneself if one has already pleaded guilty.

If the Court does not recognize the right to remain silent at sentencing and permits defendants' silence to be used against them, an inherent right—that of not being put in the position of either lying to the court (perjury) or incriminating oneself—may be lost. On the other hand, if the Court allows the right to remain silent at sentencing, defendants may be able to walk away from charges to which they have pleaded guilty but otherwise refuse to acknowledge. In short, are inferences that are met with silence to be considered as facts?

"Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Preamble, Universal Declaration of Human Rights

LRE Project Exchange

Building a Community through Partners in Human Rights Education

Marna Anderson and Kristi Rudelius-Palmer

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Celebrating 50 Years of Educating for Human Rights: Past, Present, and Future

Partners in Human Rights Education (Partners Program) makes human rights meaningful to Minnesota students in their classrooms, homes, and neighborhoods. With the Universal Declaration of Human Rights (UDHR) providing the framework, Partners Program volunteers use interactive teaching methods to relate human rights concepts to situations that impact students' lives. Students begin to understand their human rights and how they have the responsibility to defend and advocate for the human rights of others, which could mean starting an anti-violence or anti-discrimination campaign in their school, writing letters and petitions addressing the inadequate health care for people living in the United States, or demanding an end to the use of children for cheap labor. The Partners Program brings universal human rights close to home as students grapple with the problems of poverty, homelessness, discrimination, and violence.

In 1992, two lawyers approached the Minnesota Advocates for Human Rights and the Human Rights Center at the University of Minnesota Law School about teaching K–12 students about human rights. After an initial focus group with teachers, 20 teams of lawyers and teachers were trained and began team teaching in the Twin Cities schools. The following year a third person, a community representative, was added to each team. Over the past six years, the Partners Program has trained more than 900 teachers, lawyers, and other community advocates to educate more than 20,000 students about their human rights and responsibilities. The Partners Program success has impacted not only Minnesota and the nearby states of North Dakota and Wisconsin, but three communities—Atlanta, St. Louis, and San Antonio—which have also started human rights education initiatives.

Marna Anderson is director of Partners in Human Rights Education in Minneapolis, and Kristi Rudelius-Palmer is the co-director of the University of Minnesota Human Rights Center, also in Minneapolis.

The three main purposes of the Partners Program are (1) to motivate students to work for the benefit of others fostering equality and human dignity, (2) to provide educational opportunities in which students experience personal success and recognize their value as persons, and (3) to foster connections between learning about human rights and practicing human responsibilities in the community.

On December 10, 1998, the Partners Program joined human rights organizations worldwide to celebrate the 50th anniversary of the UDHR, a document that defines international human rights standards. The United Nations has also marked the years 1995–2004 as the UN Decade for Human Rights Education. In celebration of these landmarks, students organized a human rights education campaign in their local grocery stores, on local cable television, and in human rights town hall meetings. As the largest human rights education program in the United States, the Partners Program used these opportunities to motivate students to use their knowledge of human rights to educate their peers and adults in the larger community.

During the 1998–99 school year, youths were involved in a variety of community celebrations and the promotion of human rights. The Partners Program encouraged students in grades K–12 from diverse socioeconomic and ethnic backgrounds to become activists for human rights through the human rights education approaches and by human rights celebrations and events. Students increased their knowledge of human rights and responsibilities, as well as learning how to educate adults and peers in their communities about their human rights and how they could take responsible action to assure these rights.

To address the various needs of teachers in the Twin Cities Metro Area, the Partners Program has expanded its human rights education approaches to include not only the human rights education team approach but also to support teachers working independently, full-school initiatives, and the Partners Program Speakers' Bureau. Volunteers in each

area have full use of the Partners Program resources and supports including the Human Rights Education Curriculum Lending Library, communication through organizational newsletters, and eligibility for the Fellowship Program and Community Action Funds.

Human Rights Education Teams. In fall 1998, the Partners Program recruited and trained 25 educational teams to work in K–12 classrooms in the Twin Cities Metro Area. The three-person teams made up of a volunteer teacher, lawyer, and community resource person work together to provide students with an understanding of human rights and responsibilities. Teams are encouraged to work cooperatively to plan and present classroom lessons and activities.

Independent Teachers. In addition, the Partners Program has 15 individual teachers from various disciplines to teach human rights and fully integrate human rights concepts into their regular curriculum. This approach is often more attractive to teachers who already feel confident about using the human rights framework and want to participate in the Partners Program and use the lending library, fellowship program, and community action fund.

Full-School Initiatives. The Partners Program has also worked with a few schools to help build school communities by using the Universal Declaration of Human Rights as a framework for valuing, thinking, speaking, and acting toward oneself and others. All members are focused on how to assist oneself and others in developing to their fullest potential. This approach ideally involves teachers, students, administrators, staff, parents, and other community members. In the initial pilot in 1997 with Ramsey International Fine Arts School, school members were trained and supported with human rights curriculum resources.

During the 1997–98 school year, the school members painted a three-story mural on the UDHR, produced a play on child labor, held a human rights parade and rally along the streets by the school, and hosted a human rights fair for other Partners Program participants. They also integrated human rights into most classes, worked with the student council to produce a UDHR video with a local cable station, had a local human rights activist and parent address the PTO, and hosted a human rights Day Celebration event at the school.

Speakers' Bureau. The Speakers' Bureau is a fantastic resource available to all Partners Program teachers. Currently, the Speakers' Bureau has 20 volunteer presenters trained and prepared to address classrooms on approximately 14 human rights topics including child labor, immigration, religious freedom, indigenous rights, and human rights issues specific to a region of the world. The Partners Program offers fellowship grants to participants to work with human rights organizations throughout the world. These returning fellows, as members of the Speakers' Bureau, provide a wealth of knowledge for Partners' teams, teachers, and students.

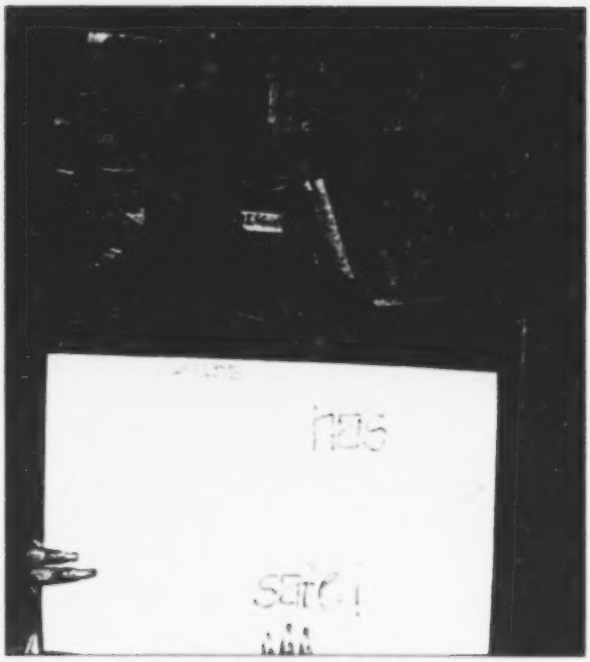
Courtesy of the University of Minnesota Human Rights Center, Minneapolis.

Human Rights Celebrations and Collaborations

The Partners Program joined local, national, and global human rights organizations in the celebration of the 50th anniversary of the Universal Declaration of Human Rights. The many celebrations connected human rights educators and activists worldwide as active participants in the global human rights movement. Partners' volunteers and students participated in the following activities:

Peace and Human Rights Art Show—October 1–November 15, 1998. Peace and Human Rights is an exhibition of artwork on peace and the UDHR. Featured in the exhibition are 30 paintings on the 30 articles of the UDHR by William T. Ayton, a British artist living in New York City. Minneapolis was one of six cities in the United States chosen to host the exhibit. The Partners Program worked in collaboration with the United Nations Association of Minnesota to ensure that Twin Cities students had the opportunity to view the show and understand the significance of each painting.

Rainbow Food Stores Join Hands with Students for Human Rights—November 15–December 15, 1998. Students from more than 25 Minnesota schools created more than 1,000 posters on the articles of the Universal Declaration of Human Rights to hang in 34 Rainbow Food Stores throughout the Twin Cities area. Students were able to educate shoppers about their posters and passed out copies of the UDHR at the stores on the weekend before Human Rights Day.



Courtesy of the University of Minnesota Human Rights Center, Minneapolis.

50th Anniversary Celebrations on Human Rights Day—December 10, 1998. More than 10 Partners Program classrooms held Human Rights Day celebrations in their schools or communities. Students read poems and personal essays as well as sang human rights raps at the human rights town hall meetings held at the St. Paul and Minneapolis city halls. Pillsbury Elementary School produced and presented an artistic performance on the UDHR in the local Government Center. These human rights celebrations drew the attention of the larger community to the 50th anniversary and gave Partners' students the opportunity to educate their peers about human rights, develop leadership skills, and increase their knowledge of world events and human rights.

Amnesty International "Human Rights Education" Annual Meeting. In April 1999, Amnesty International will hold its national annual meeting in Minneapolis. The focus of the meeting will be human rights education, and Partners Program teachers and students will play a significant role as a model human rights education program in the United States. Partners Program students will volunteer, present, coordinate, and give their voice to the human rights movement.

Human Rights Education Works!

The positive impact of the Partners Program has been measured in a variety of ways these past six years. Teachers report dramatic changes in students' behaviors and attitudes since receiving human rights education. One teacher described a student as "a tough bully" at the beginning of the year and by midyear witnessed this same student picking up a younger child, who had been pushed to the ground. This student had received human rights education and now chose to intervene when he saw another student being discriminated against.

Last year, Minnesota Advocates for Human Rights worked with the Search Institute in an attempt to quantify teachers' testimonies about observing remarkable changes in students who learned about human rights and responsibilities through the Partners Program. The findings supported what the teachers and volunteers have been sharing for the past five years. Not only were students learning about human rights problems in the United States and other parts of the world, but their attitudes and behaviors were becoming more respectful and less discriminatory.

Fifth and sixth grade students in a Minneapolis public school participated in this human rights education study. The measurement tools included both pretest and posttest surveying, behavioral observations, and critical analysis essays. The results showed students in the experimental group were more likely to be bothered when people were put down. The human rights education students were more apt to believe that actions they might take would improve life for other people. These attitudinal changes were complemented by a willingness to speak up for equality and take responsibility for assuring that all people are treated fairly. These behavioral results confirm that students with human rights education are more likely to intervene to stop a fight or defend someone whose human rights are being violated. One Partners Program social worker, representing numerous other teachers' comments, stated, "Human rights education is the most powerful discipline technique I've found. I've worked through mediation and conflict resolution programs, but human rights education is the crucial foundation. Human rights education provided students a values framework, which they can carry with them and use to problem solve throughout their whole life."

For More Information . . .

To find out more about the Partners Program, contact

Partners in Human Rights Education and
Human Rights USA Resource Center
310 Fourth Avenue South, Suite 1000
Minneapolis, MN 55415-1012
Phone 612-341-3302
Toll free 888-HREDUC8
Fax 612-341-2971

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Amnesty International

Taking Action in the Human Rights Community

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Any number of countries routinely violate the human rights of children by ignoring their health needs, turning a blind eye to police brutality, refusing to allow international aid workers access to areas decimated by local rebellions, or torturing youths of the "wrong" nationality or religion. Amnesty International (AI) is an agency charged with being a friend to those who seemingly have no friends, bringing justice to places where there is no apparent justice, and protecting the human rights of all persons around the globe.

"Urgent Action" for Kids

Amnesty International USA has set up an "Urgent Action Network," which promotes a special program aimed at the young people in the United States. Essentially, "Children's Edition Urgent Action" is designed to get 8- to 14-year-olds involved in helping their oppressed counterparts in other countries. Amnesty International Canada has a similar program called "The Lifesaver"; in the United Kingdom, it is the "Junior Urgent Action Network."

What AI is attempting to do is make young people its allies in fighting oppression. The organization does this by encouraging kids to become its lobbyists in a letter-writing campaign. Amnesty International provides the necessary information—the name and age of the victim, the cause of action (imprisonment, for example), the reason for leniency, and the name of whom to write on the victim's behalf. A picture of the victim is included, if available, and a map of the country is always reproduced. The guidelines are simply written; no graphic details of the alleged mistreatment are included in the cause of action.

One teacher endorses the program as a learning tool as well as an opportunity to lobby for justice. According to Kim Grisson, a 7–8 grade English teacher from Indiana, "I have found the letter-writing campaign to be a wonderful tool in increasing awareness and improving [students'] writing skills. Keep the appeals coming."

Classroom Materials

When teachers sign up to receive AI-USA's blueprints, they receive a letter-writing guide with specific instructions, as well as classroom games and activities that may be carried out in conjunction with the actual writing of the correspondence. Since 1987, students have written tens of thousands of letters on behalf of more than 200 individuals, according to AI.

The guidelines for young activists are calculated to give teachers, parents, and children an opportunity to take action in situations in which there have been serious human rights abuses against youths. Without the data supplied by AI, most people would likely remain unaware of the mistreatment.

For example, following the Tutsi takeover of Rwanda from the Hutus, the Tutsis instigated a rebellion in the neighboring Democratic Republic of Congo (formerly Zaire). This has been widely reported. Not so widely known is that last April 52 Hutu Rwandese refugee children, who were being treated for malnutrition in a Congo hospital, were abducted by the rebels and kept in a closed container without food or water for three days. They were freed and returned to the hospital only after an outcry arose from members of the international community.

In July 1996, 36 Afghan refugee children were arrested in Pakistan for not possessing valid passports. The children, some as young as 12, were put in jail for one to nine weeks—locked in a cell for all but two hours a day until their parents could buy their release.

From Russia, AI gives the following quote from a Somali woman asylum seeker: "I have five children, three of them were born in Moscow. They are all sickly; we can afford to eat only twice a day and cannot afford to buy meat or vegetables. ... My children are not allowed to attend school. We experience hostility from the neighbors—I was once threatened with a knife in the lift [elevator]. We had to leave our last apartment because of harassment from police and from the neighbors. I have no right to work and have to pay fines to police officers constantly as I do not have a document saying that I am a refugee."

Closer to home, the AI headline reads: "France: 8-Year-Old Child Refugee Shot and Killed by Border Police." In August 1995, a convoy carrying 43 refugees from the Muslim region of Serbia had made its way as far as the French border (their intent was to seek asylum in either France or Germany). Two border police claim that they were in uni-

form and the convoy did not stop as ordered, so they fired three shots, killing the child. The Serbs claimed that they saw no uniforms and no lights, only shadows that they took to be bandits. A day after the killing, all of the potential refugees (including at least one key eyewitness) except the victim's immediate family were deported (illegally, it was later determined). French police may use their weapons only in self defense, so that issue remains an open question.

Amnesty International USA's

URGENT ACTION APPEAL

• Urgent Action Program Office • POB 1270, Nederland CO, 80466-1270 • ph. (303) 440 0913 • fax (303) 258 7881 • email emoore@aiusa.org •

CHILDREN'S EDITION

December 1998 - February 1999

US Campaign to STOP the Use of Child Soldiers

Amnesty International is worried about children under eighteen years of age who are encouraged or forced to become soldiers in many countries of the world.

Hundreds of thousands of children are taking part in armed conflicts in many parts of the world. Thousands of child soldiers are hurt and killed while taking part in war every year. Some child soldiers are treated like slaves who must cook and carry and walk into dangerous minefields. Some child soldiers are as young as ten-years-old.

Amnesty International has joined with other organizations who are concerned about children to protest the use of youngsters in armed conflict and war.

Please send a polite letter to the United States Secretary of State Madeleine Albright. Ask her to support a worldwide ban on the use of children as soldiers. Thank Secretary Albright for reading your letter and request that she let you know exactly how she will take action to protect children from forced participation in armed conflict internationally.

[Salutation: Dear Secretary Albright]

SECRETARY MADELEINE ALBRIGHT
SECRETARY OF STATE
STATE DEPARTMENT

AI Urgent Action for Young People may be obtained at no cost by contacting Ellen Moore, UA Program Office, P.O. Box 1270, Nederland, CO 80466; Phone: 303/440-0913; Fax: 303/258-1170; E-mail: emoore@aiusa.org.

Teaching Strategy

Human Rights Around the World and at Home

Patrick Manson

Update on Law-Related Education, 22.3, 1999, pp. 41–42. © 1999 American Bar Association.

Objectives

As a result of this lesson, students will

- Identify human rights
- Cite examples of human rights abuses and affirmations
- Relate actions to the articles of the Universal Declaration of Human Rights (UDHR)

Target Group: Middle and secondary schools
Time: 2–3 class periods
Materials Needed: copies of the UDHR (see page 53) and Student Handout

Procedures

Part A: Identifying Rights Issues Around the World

1. Divide participants into small "research groups" and give each member a copy of the UDHR and the Student Handout. Explain that groups will relate articles of the UDHR to statements on the handout by identifying examples of rights abuses or rights affirmations.
2. Assign each research group a different set of 3–6 statements from the handout. Allow 15–20 minutes for each group to find two or more UDHR articles that apply to each statement. For example, Statement 12 "The government kills advocates for democracy in China during a peaceful demonstration" represents an abuse of Article 3 (right to life) and an affirmation of Article 20 (right of peaceful assembly). A guided example may be helpful to start the process.
3. Regroup participants: if there are four in a group, assign each a number from 1 to 4. Then all the "ones" form a group, all the "twos" form a group, etc.
4. Ask the participants in the new group to report to each other on their research group's findings, so that each statement on the handout is covered. Discuss selected statements that students find especially important or interesting.

Part B: Identifying Rights Issues at Home

5. Have participants generate a similar list of 10 affirmations and 10 abuses that are specific to their own country and community.

See the article on page 6 and the case study on page 35 for background information.

6. Ask participants to return to their original research groups. As in Step 2, participants match the new list of statements with articles of the UDHR.
7. As a class, students identify those affirmations and abuses that particularly touch their lives as they respond to these questions:
   - Why are these particular statements especially meaningful?
   - Are there individuals and groups working to promote and defend the rights people now have?
   - Are there groups working in the United States and/or this community to correct human rights abuses?
   - Are there actions that participants themselves might want to take? If appropriate, begin developing an action plan.

Source: Adapted and reprinted from Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights, *ed. Nancy Flowers (Chicago: Amnesty International's Human Rights Educators' Network, 1998) pp. 59–62, by permission of the publisher.*

Patrick Manson, Human Rights Educators' Network, Amnesty International USA, teaches English and social studies at Walt Whitman Community School, a private alternative high school in Dallas emphasizing sexual orientation tolerance. He is the co-director of Amnesty International's Human Rights Education Center of Dallas and serves on the advisory board to the Human Rights Educators' Steering Committee.

Student Handout

Rights Around the World

1. A person in South Africa registers to vote.
2. The Chinese government punishes a couple for having a second child.
3. The government of Turkey burns down villages of Kurds—an ethnic minority of southeast Turkey—and forces them to move to new towns.
4. A Brazilian child is denied a school education because the family can't afford to pay for books.
5. The Burmese military overthrows a democratically elected government.
6. A criminal in El Salvador is held in jail for months without being charged with any crime.
7. A 14-year-old girl in Burma is sold by her impoverished family to a house of prostitution where she must work until she earns enough to repay the money given her parents.
8. Garment workers in Sri Lanka are forced to work long hours in poorly lit shops and to wait months to be paid.
9. A Native American asserts her right to collect eagle feathers for a religious ceremony.
10. People fleeing armed violence in Haiti are refused admission as refugees to the United States.
11. A man with a disability is sentenced to death in the United States for a crime he committed when he was 14.
12. The government kills advocates for democracy in China during a peaceful demonstration.
13. Women in Afghanistan are not allowed to attend school or hold jobs.
14. During World War II, Japanese-Americans are forced from their homes and held in internment camps in the United States.
15. Students in Germany read in the newspaper about politics in their country and human rights in other countries.
16. During elections the government of Croatia allows only government candidates to appear prominently in the state-run media.
17. Activists in Guatemala start a cooperative to provide food and education for homeless children.
18. Children in Pakistan are forced to work in carpet factories for little pay and long hours; they cannot go to school.
19. The city council removes books from the public library that it considers immoral or unpatriotic.
20. Native peoples of Nicaragua establish a university to maintain their cultural traditions and better the education of their people.
21. Parents in the area of Chernobyl, Ukraine, whose children have birth defects resulting from a nuclear accident in 1986, demand information from the Russian government (then in power in Ukraine).
22. Students in Europe and North America boycott soccer balls made by child laborers and write letters to Pakistan and India to end this abuse.
23. Native Americans are forced to attend boarding schools where they are forbidden to speak their tribal languages.
24. Workers in Poland demand the right to form a union.
25. A terrorist from Ireland bombs a public restaurant in England.
26. Ethnic Ogoni people in Nigeria protest the mining of oil in their traditional homeland.
27. A woman in Iran is beaten for not covering her face in public, an illegal act.
28. Australian aborigines regain land taken by the government and are allowed to make their names for traditional landmarks official.
29. Palestinians demonstrate for statehood.
30. A teacher insults a student for answering a question incorrectly.
31. In Saudi Arabia the hand of a thief is cut off, a punishment endorsed by religious teachings.
32. Students in the Philippines form clubs to debate current political policies.

Teaching Strategy

Comparing Rights Documents

David A. Shiman

Update on Law-Related Education, 22.3, 1999, pp. 43–44. © 1999 American Bar Association.

Background

This activity asks participants to compare rights proclaimed in the Universal Declaration of Human Rights (UDHR) with those present in the United States Bill of Rights and other constitutional amendments. It challenges them to explore reasons for the presence or absence of certain rights and to reflect on the role of government in guaranteeing rights.

Objectives

As a result of this lesson, students will

- Compare rights identified in the UDHR with those in the United States Bill of Rights and other amendments to the Constitution
- Suggest reasons for differences in the rights identified in the UDHR and in the Bill of Rights and other amendments to the United States Constitution
- Identify rights guaranteed to citizens of the United States
- Express opinions about governmental responsibility in assuring human rights

Target Group: Middle and secondary schools
Time: 2–3 class periods

David A. Shiman is a professor of education at the University of Vermont in Burlington.

Materials: Student Handout, copies of the UDHR (see page 53) and the amendments to the United States Constitution

Procedures

1. Ask participants to complete the Student Handout and have them refer to the UDHR and to the Bill of Rights and other amendments to the United States Constitution to check their answers.
2. Discuss the following questions:
   - What did you discover that was a surprise to you?
   - Which rights asserted in the UDHR or Bill of Rights and other amendments to the United States Constitution do you believe should or should not be universal? Give reasons.
   - Do you think the Bill of Rights and other constitutional amendments cover more issues than the UDHR? Why or why not?
   - Did the writers of the Bill of Rights and the writers of the UDHR have different conceptions of what rights mean? If so, how did their understandings of rights differ?
   - Do U.S. citizens have any rights besides those included in the Bill of Rights and other amendments to the United States Constitution and other U.S. law? Explain.
   - Should the Bill of Rights and other amendments to the United States Constitution be more inclusive? Why or why not? What rights, if any, would you add? For example, should Americans be guaranteed the right to food, shelter, education, and health?
   - How do you explain why some social, economic, and cultural rights found in the UDHR are not guaranteed by the American documents?
   - In your opinion, what should be the limits and responsibilities of government in guaranteeing citizens certain rights? For example, is hunger or homelessness a government's responsibility?

See the articles on pages 6 and 18 for background information.

Source: Adapted and reprinted from David A. Shiman, "Comparing Human Rights," Teaching Human Rights (Denver: Center for Teaching International Relations, University of Denver, 1999) pp. 5–21, with permission of the publisher.

Student Handout

Comparing Rights Documents

Directions: For each right listed below, indicate with a check in the appropriate box whether it is included in the Universal Declaration of Human Rights (Column 1) and in the United States Bill of Rights and the other constitutional amendments (Column 2). Also indicate whether you think this right should be guaranteed by all governments (Column 3).

Right	Column 1 Included in UDHR	Column 2 Included in U.S. Bill of Rights and Other Amendments	Column 3 Should Be Guaranteed by All Governments
1. Free choice of employment			
2. Free press			
3. Free choice of spouse			
4. Adequate shelter			
5. Earn as much as one wants			
6. Trial by jury			
7. Free choice of number of children			
8. Freedom from torture and inhumane treatment			
9. Freedom of religion			
10. Right to own property			
11. Right to travel freely			
12. Right to an education			
13. Right to own arms			
14. Adequate food			
15. Adequate health care			
16. Right to clean air and water			

Teaching Strategy

Human Rights in the News

Nancy Flowers

Update on Law-Related Education, 22.3, 1999, pp. 45. © 1999 American Bar Association.

Objectives

As a result of this lesson, students will

- Develop awareness of human rights issues in everyday life
- Acquire information about human rights issues
- Cite examples of human rights protections and violations

Target Group: Secondary
Time: 1–2 class periods
Materials: newspaper pages, chart paper, tape or glue, scissors, copies of the Universal Declaration of Human Rights (UDHR) (see page 53)

Procedures

1. Divide participants into small groups. Each group receives a newspaper or pages from a newspaper, scissors, tape or glue, and a sheet of chart paper.
2. Each group will construct a poster using items from the newspaper grouped under the following categories. Alternatively, have all groups contribute to four separate posters, combining the articles they have found to make class posters.
   a. rights being practiced or enjoyed
   b. rights being denied
   c. rights being protected
   d. rights in conflict

   Encourage participants to look not only for news stories but also for small features such as announcements and advertisements (e.g., the language of the paper itself illustrates the right to language and culture, advertisements can illustrate the right to private property, reports of social events may illustrate cultural rights, and personal columns can reflect many rights in practice).
3. Once participants have found stories for each category, they should select one story from each category to analyze:
   a. What specific rights were involved in the story? List them beside the article.
   b. Find the article(s) of the UDHR that cover each right and write the article number(s) on the list.
4. Ask a spokesperson from each group to summarize the group's selections.
5. Choose one or two stories from each group's poster, and ask the group to explain its analysis of the story in terms of the UDHR:
   - What specific rights were involved in several stories?
   - What articles of the UDHR were involved?
   - Were more stories concerned with political and civil rights or social, economic, and cultural rights? Why do you think one kind of right appeared more often?

See the article on page 6 for background information.

Going Further

1. *Keep Searching*—Leave the posters hanging for an extended time, during which participants continue to add clippings. Reassess the posters and the concluding discussion.
2. *Compare Media Coverage*—Ask participants to compare coverage of the same human rights stories in different newspapers and/or different media (e.g., radio, magazines, TV). What differences can they observe in the importance given to the story? In emphasis of features of the story? Are there different versions of a single event? Did any version of the story explicitly mention human rights?
3. *Survey Television Coverage*—Ask participants to watch a news program on TV and write down the topics covered, the rights involved, and the amount of time given to each human rights topic.

Source: Adapted and reprinted from Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights, *ed. Nancy Flowers (Chicago: Amnesty International's Human Rights Educators' Network, 1998) pp. 52–53, by permission of the publisher.*

Teaching Strategy

A New Planet

Edward L. O'Brien

Update on Law-Related Education, 22.3, 1999, p. 46. © 1999 American Bar Association.

Objectives

As a result of this lesson, students will

- Develop a list of basic rights
- Compare their list of rights to the Universal Declaration of Human Rights (UDHR)
- Distinguish civil rights from human rights
- Identify rights that they consider most important

Target Group: Middle and secondary schools
Time: 1–2 class periods
Materials: chart paper, marking pens, copies of the UDHR (see page 53)

Procedures

Part A: Human Rights for a New Planet

1. Read the following scenario:
   A small new planet has been discovered that has everything needed to sustain human life. No one has ever lived there. There are no laws, no rules, and no history. You will all be settlers there and in preparation your group has been appointed to draw up the bill of rights for this all-new planet. You do not know what position you will have in this country.
2. Instruct participants, working in small groups, to do the following:
   a. Give this new planet a name.
   b. Decide on 10 rights that the whole group can agree upon and list them on the blackboard or chart paper.
3. Each group presents its list to the class. Make a "master list" that includes all the rights the groups mention, combining similar rights.
4. When all the groups have reported their lists, examine the master list:
   - Do some of the rights overlap? Can they be combined?
   - Is any right listed on only one list? Should it be included or eliminated?
5. Discuss these questions:
   - Did your ideas about which rights were most important change during the activity?
   - How would life be on this planet if some of these rights were excluded?
   - Are there any rights you would still like to add to the final list?
   - Why is making a list like this useful?

Part B: Linking Rights to the UDHR

1. When the master list is complete, have participants return to their small groups and try to match the rights listed with articles of the UDHR. Some rights may include several articles. Others may not be in the UDHR at all.
2. As a group finishes its comparison, ask a representative to write down the numbers of the articles identified next to the right on the master list.
3. Review each right on the list.
   - As participants identify a right with a particular UDHR article, ask that they read the article or its simplified version aloud.
   - Resolve any contradictions about which right matches which article.
4. Discuss these questions:
   - Were some of the rights on the list not included in the UDHR? How can you explain this omission?
   - Were some rights in the UDHR not included on the group's list? How can you explain this omission?

Going Further

1. *Personal Preferences*—Ask participants to mark on the list the three rights that mean the most to them personally. Ask someone to tally the marks. When the group continues, remind participants about the interdependency and indivisibility of rights. Discuss: Why do you think certain rights received so many marks from this group? Are there special circumstances in this community or country that make some rights more important than others?
2. *Categories of Rights*—Explain the distinction between civil/political rights and social/economic/cultural rights. Ask participants to determine which rights on their list are civil and political and which are social, economic, and cultural. Did any one kind of right predominate? Why?

Source: Adapted and reprinted from Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights, *ed. Nancy Flowers (Chicago: Amnesty International's Human Rights Educators' Network, 1998) pp. 49–51, by permission of the publisher.*

Teaching Strategy

Rights, Teens, and Society

Julius Menacker

Update on Law-Related Education, 22.3, 1999, pp. 47–49. © 1999 American Bar Association.

Background

The theory supporting distinctions between the rights of minors and the rights of adults is that adults are capable of making independent decisions and minors are not capable of living independently without the guidance and protection of adults and, therefore, must be subject to the control and supervision of adults. Everyone would agree that this makes sense regarding very young children. However, this distinction can be controversial when applied to teen-agers. For example, before the Twenty-sixth Amendment to the U.S. Constitution was passed in 1971, the legal voting age was 21, but the amendment lowered the voting age to 18. That legislation was passed in recognition of the changing conditions of modern American society. Conditions continue to change. Therefore, are there additional modifications that should now be made in regard to the rights of teen-agers? For example, should teen-agers be liable for status offenses merely because of their age? If so, which status offenses should apply to teen-agers, and which should not?

Objectives

As a result of this lesson, students will

- Better understand the legal relationships between minors and adults and reasons for these relationships
- Identify the most positive and negative features of current law governing the status of minors and the relationship of adults to children
- Express opinions about how the status of childhood can be improved
- Express opinions about how teen-age children should act in their own best interests

Target Group: Secondary
Time Needed: 2–3 class periods
Materials Needed: Student Handouts 1 and 2

Procedures

1. Distribute Handouts 1 and 2 to students. After they have read the handouts, ask them to review the list of issues on Handout 1 and to discuss whether to add issues to the list or delete issues that they believe should not be on it. A majority vote of class members is needed to add or delete an issue.
2. Have students examine the court cases listed on Handout 2. Discuss whether each case broadens or restricts student rights. More details about each one are available at http://supct.law.cornell.edu/supct.
3. Distribute copies of the article "Children's Human Rights." Encourage students to consider how the information about children's rights in the article applies to the issues on Handout 1 and the court cases on Handout 2.

See the article on page 22 and the case study on page 33 for background information.

4. Divide the class into groups of about five to seven students. Assign each group two or three of the issues for the purpose of recommending appropriate laws affecting the rights and responsibilities of teen-agers, including penalties for violations of laws and regulations. Student recommendations must be supported by a rationale that considers both student rights and responsibilities as well as the differences between adult and teen-age roles.
5. Each group should appoint a spokesperson to present its recommendations to the class, together with the supporting rationale. After each presentation, class members should be given the opportunity to ask questions and express opinions about the recommendations.
6. After all recommendations have been made, all class members should vote to indicate their approval or rejection of each recommended change in law and/or regulation.
7. After tallying results on the chalkboard, discuss how the results reflect student attitudes regarding the balance between teen-age rights and teen-age protections.

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Student Handout 1

Issues Affecting Teen-agers in the 1990s

Teen-age pregnancies

Teen crime and violence

Teen drug, alcohol, and tobacco abuse

School truants/dropouts and compulsory education law

Earlier maturity than in previous generations

Increased parental divorce rates

Greater access to information, especially through the Internet

Increased school security and student searches (metal detectors, urinalysis of athletes, etc.)

Restrictions on student free expression (school newspapers, dress codes, etc.)

Policies concerning student suspension and expulsion

School policies for informing parents about student sexual questions/activities

School policy regarding sexual harassment (of students by teachers, of students by other students)

Drivers' licenses and restrictions for teen-agers

Costly automobile insurance rates for teen-agers

Other issues (list below)

_____

_____

_____

_____

_____

_____

Student Handout 2

A Sample of Court Cases Affecting Teen-age Rights and Protections

Heney v. Heney, 4 Wn. 20 445, 459, 165 P 2d 684 (1946), limited parental power to protect children from abuse or neglect because of the state's interest in enabling minors to grow up to be "worthy and useful citizens."

In Re Gault, 387 U.S. 1 (1967), was a case considering the rights of minors in a juvenile delinquency proceeding. The court strengthened the rights of minors by holding that they must be accorded basic rights of due process in delinquency proceedings.

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), established that minor students possessed free expression rights in the school, provided that such expression did not cause a disruption of the school program.

Goss v. Lopez, 419 U.S. 565 (1975), required school officials to provide students with due process (at the very least, some kind of notice and hearing) before they could be suspended or expelled. As the severity of the intended penalty increases, so must the amount of due process protection.

New Jersey v. T.L.O., 469 U.S. 325 (1985), freed school officials from the need to obtain a warrant for searching a student when they had a reason to believe that the student possessed illegal materials; it also freed them from the probable cause requirement.

Bethel School District v. Fraser, 478 U.S. 675 (1986), held that school authorities may punish a student who made a speech with "graphic sexual metaphor" before a student audience.

Hazelwood v. Kuhlmeier, 484 U.S. 260 (1988), held that school authorities may censor student articles in a school newspaper when they violated the educational principles taught in the school's journalism class and when the reader may assume that the school approved what the students wrote.

Shaney v. Winnebago County Dept. of Social Services, 489 U.S. 189 (1989), held that a public social service agency's failure to protect a child from parental abuse did not violate the due process rights of the injured child.

Franklin v. Gwinnett County Schools, 503 U.S. 60 (1992), held that a student was entitled to sue for damages under Title IX because she was sexually abused by a teacher. School officials had advised the student not to press charges, and the teacher had resigned.

Vernonia School District 475 v. Acton, 515 U.S. 646 (1995), held that public schools may require students engaged in interscholastic athletic programs to submit to random urinalysis testing for drug abuse.

State of Washington v. CPC Fairfax Hospital, No. 634389-4 June 26, 1996, held that the involuntary incarceration of 13-year-old and older minors in mental health facilities, without judicial oversight, is not permitted.

Gebser v. Lago Vista Independent School District, 118 S.Ct 1989 (1998), held that damages under Title IX could not be allowed for a teacher's sexual harassment of a student unless a supervisor of the teacher knew of the inappropriate behavior.

Davis v. Monroe County is scheduled to be heard by the U.S. Supreme Court this session. The 11th Circuit Court of Appeals ruled that a school can be held liable for the actions of a student who sexually harassed another student if the school had adequate knowledge and failed to take appropriate action.

Teaching Strategy

Using the Human Rights Poster

Update on Law-Related Education, 22.1, 1999, pp. 50–51. © 1999 American Bar Association.

Background

The Universal Declaration of Human Rights (UDHR) proclaimed by the United Nations in December 1948 recognizes basic economic, social, political, civil, and cultural rights. The preamble of the declaration states that the rights identified are inherent rights, or rights belonging to all humans simply because they are human. The preamble also states that for the rights to be realized all states must understand them as basic rights.

Objectives

As a result of this lesson, students will

- Acknowledge that all people have basic rights
- Identify the purpose of the Universal Declaration of Human Rights
- Analyze examples of human rights situations
- Relate actions to the articles of the UDHR

Target Group: Middle and secondary schools
Time: 1–2 class periods
Materials Needed: Student Handouts 1–3, which include the UDHR (see page 53)

Procedures

1. Display the poster and ask a volunteer to read the copy. Discuss the relationship of the poster illustration to the copy. The poster depicts men and women of different backgrounds and the copy indicates that human rights apply to all people. If necessary, help students understand that all people regardless of race, ethnic origin, or gender have basic innate human rights, for example, equality and freedom. Point out that the poster provides visual reinforcement of the second article of the Declaration of Human Rights, which states that everyone is entitled to all the rights and freedoms ... without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Discuss the meanings of the terms on the poster, such as *equality* and *freedom*. Emphasize that *equality* refers to the dignity and rights of all humans, and *freedom* relates to the ability to exercise these rights without arbitrary interference.
3. On the chalkboard, draw a two-column chart, labeling one column *Equality and Freedom* and the other column *Examples*. Ask students to identify the rights and freedoms individuals have as humans. List those in the column labeled *Equality and Freedom*. Then have students list examples of each right or freedom listed. Place examples in the second column.
4. Divide the class into small groups and distribute a copy of Handout 1 to each group. Ask group members to choose a situation described on the handout, research background information about the situation, and analyze the situation as a human rights issue. They may wish to refer to the chart on the chalkboard during their discussion. Do the situations provide examples of violations of human rights? If so, what rights are violated? Are the situations examples of ways in which human rights are respected?
5. Distribute Handouts 2 and 3 to the groups. Have them use Handout 2's questions to help them focus on the issue of human rights in the United States. How are human rights viewed in the United States?
6. Have each group prepare a five-minute summary of the group discussion and appoint a member to present the summary to the class. After all summaries have been presented, the presenters will sit on a panel to field questions. The presenters may elicit the help of other group members in answering questions if necessary.
7. Wrap up the session by emphasizing human rights as basic rights

See the abbreviated list of Universal Human Rights on page 53 and the article on page 6 for background information.

"Human rights is the right to speak, write, and assemble freely, and the right to stage a demonstration. It is the right of every citizen to use this right anywhere, any time, without fearing suppression."
Government employee, Addis Ababa, Ethiopia

Student Handout 1

Human Rights Scenarios

Read each scenario. Research background information about each case and decide what human rights issues are involved. Determine which right or rights are involved and whether the case depicts a human rights violation or affirmation.

1. In 1991, Daw Aung San Suu Kyi won the Nobel Peace Prize in recognition of her peaceful protests against the repressive regime in her homeland Burma. At the time, Suu Kyi was under house arrest for her protests and she remained under arrest for many years.

2. Mother Teresa was a Roman Catholic nun who founded an order of religious women. She and her sisters began their work in Calcutta, India. There they took the sick and dying from the streets and fed and cared for them. She became known as the saint of the gutters for her work among the poorest people of Calcutta.

3. In April 1995, a federal building in Oklahoma City was bombed in an antigovernment plot. One hundred sixty-eight people lost their lives and many others were injured. The government compiled evidence against a former soldier Timothy McVeigh and his friend Terry Nichols. Both were tried and convicted of the bombing.

4. In 1995, 168 million children under five years old were underweight. Death rates for underweight children are five times greater than for children of normal weight. Malnutrition is a factor in about half of the deaths among children under five years old.

5. After the Taliban led by Islamic students gained control of most of Afghanistan in 1996, the leaders of the Taliban began imposing strict observance of Islamic religious laws. Women in the country were forbidden to work outside the home and were required to wear clothing that covered them from head to toe.

Student Handout 2

Human Rights Violations?

Many countries have more serious human rights violations than the United States. This may be one reason why many people in the United States tend to use the term *human rights* only when referring to violations happening in other countries. However, human rights do apply to all people in all countries, including the United States. The following activity provides an opportunity for students to look at an aspect of human rights in the United States.

Are these human rights violations?

a. Assume the following take place in the United States. Decide if each is a human rights violation. If it is, identify the article of the Universal Declaration of Human Rights at issue. Use Handout 3 to identify the articles.

1. Before class starts, the teacher says, "You can't pray in school."
2. A child in the family goes to sleep hungry because the parents have no money to buy food.
3. A student receives a poor education in her high school and is rejected for every job she applies for.
4. A burglar breaks into a house at night and steals a television.
5. A man drives his car too fast and crashes into a guardrail.
6. A Spanish-speaking student speaks Spanish to another student. The principal tells the students that only English may be spoken in the school.
7. A woman is ill and is turned away from a hospital because she doesn't have health insurance or the money to pay her medical bill.
8. A homeless man asks for money from people walking on the street, but people do not give him any money.
9. A boy attends a public school that does not have enough books for all the students.
10. A newspaper is not allowed to publish the method of making a bomb.
11. An African-American police officer arrests a white man, who physically resists arrest and yells racist words at him. The police officer handcuffs and hits the man three times with his police baton.

b. Did you find two or more human rights in conflict in any of the above examples? What should be done when this occurs?

c. In which of the examples are there laws in the United States to protect the human right involved? In which are there no such laws? Should there always be a law to protect a human right?

Source: O'Brien, Edward L., Eleanor Greene, and David McQuoid-Mason. *Human Rights for All: Education Toward a Rights Culture.* Eagan, Minn.: West Publishing, 1996. (For a copy call 1-800-824-5179.)

Student Handout 3

UNIVERSAL DECLARATION OF HUMAN RIGHTS (ABBREVIATED)

Now, therefore, the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms:

Article 1	Right to Equality
Article 2	Freedom from Discrimination
Article 3	Right to Life, Liberty, Personal Security
Article 4	Freedom from Slavery
Article 5	Freedom from Torture, Degrading Treatment
Article 6	Right to Recognition as a Person before the Law
Article 7	Right to Equality Before the Law
Article 8	Right to Remedy by Competent Tribunal
Article 9	Freedom from Arbitrary Arrest, Exile
Article 10	Right to Fair Public Hearing
Article 11	Right to be Considered Innocent Until Proven Guilty
Article 12	Freedom from Interference with Privacy, Family, Home, and Correspondence
Article 13	Right to Free Movement in and out of the Country
Article 14	Right to Asylum in Other Countries from Persecution
Article 15	Right to a Nationality and Freedom to Change It
Article 16	Right to Marriage and Family
Article 17	Right to Own Property
Article 18	Freedom of Belief and Religion
Article 19	Freedom of Opinion and Information
Article 20	Right of Peaceful Assembly and Association
Article 21	Right to Participate in Government and in Free Elections
Article 22	Right to Social Security
Article 23	Right to Desirable Work and to Join Trade Unions
Article 24	Right to Rest and Leisure
Article 25	Right to Adequate Living Standard
Article 26	Right to Education
Article 27	Right to Participate in the Cultural Life of Community
Article 28	Right to Social Order Assuring Human Rights
Article 29	Community Duties Essential to Free and Full Development
Article 30	Freedom from State or Personal Interference in the Above Rights

Source: O'Brien, Edward L., Eleanor Greene, and David McQuoid-Mason. *Human Rights for All: Education Toward a Rights Culture.* Eagan, Minn.: West Publishing, 1996. (For a copy call 1-800-824-5179.)

Student Forum

Should Health Care Be Considered a Human Right?

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A Note to Teachers: The forum provides your students with an opportunity to learn more about human rights through role-play. Students will debate the issue of whether Americans should have an absolute right to adequate heath care. They are responsible for the forum. Your role is to provide copies of materials and serve as a consultant. You may find the Internet useful in securing the necessary information—from the American Civil Liberties Union or the American Association for the Advancement of Science (AAAS) Directory of Human Rights Resources on the Internet, for example.

To the Student

This forum gives you an opportunity to take responsibility for your own learning. The activity will help you explore other people's views and develop your own. You are being asked to evaluate the pros and cons of a health-care issue.

Background

Universal health care is, to say the least, a controversial subject. Some oppose it as cradle-to-the-grave socialism that does not work. Others contend that there is a "human right" to health that ought to be guaranteed by governments. In the United States, insurance programs provide health-care coverage. Government programs include Medicare, for the elderly, and Medicaid, for poor families and individuals with disabilities. In the private sector, many employers offer some form of health insurance in their benefit packages. Yet, roughly 42 million Americans do not have health-care insurance coverage. The question is, Does society owe these people the price of health? Should taxpayers be liable for more than emergency treatment at a local hospital? Consider the case of health maintenance organizations (HMOs), which were at first regarded as an inexpensive alternative to conventional medical insurance plans. HMOs have been widely criticized for denying needed care. The controversy boils down to who pays how much for what to whom for necessary medical procedures.

How to Conduct the Forum

1. The class divides into groups, one for and one against taxpayer-supported health care for all Americans.
2. The groups each select three students to serve on a panel to present group opinions on the subject.
3. All students complete a student forum ballot and submit it the panel.
4. Students identify community members to invite to participate in the debate as speakers or as interviewees. Doctors, nurses, or other hospital workers or caregivers; insurance company representatives; congressional representatives; or relatives who have been recently hospitalized would be candidates for input.
5. Panel members select a moderator and a clerk, and they decide whether to role-play the sample roles or create their own roles.
6. The clerk, together with the panel, schedules the presentations of the characters and guest speakers. He or she also keeps minutes of the meeting.
7. The moderator opens the forum with a statement explaining the topic of discussion. The moderator is responsible for ensuring that the speakers have equal time to present their positions (five minutes each) and maintaining order if necessary.
8. The panel then makes its presentation. Each character gives his or her statement and may answer questions from any other students if time permits. Panelists should answer consistently with the roles they are playing.
9. All students should once again complete a forum ballot. Panel members should then review and summarize ballot results and report the prevailing opinion to the class (making note of whether the majority opinion has changed since the initial ballot was taken).

Introduction

Roles The following roles are for individuals who have agreed to discuss their views and positions in a panel discussion. They represent the interests of various individuals who are involved in debate about universal health care. Students playing the roles should have five minutes to present their positions and to answer questions from the audience. When questioned by the audience, students should answer in a manner consistent with their roles. Students in the audience may play the roles of reporters covering the discussion and community residents.

Moderator Good evening. We are here this evening to discuss the role of government as a guarantor of last resort of health care for all Americans. Three panelists are in favor of treating health care as a basic human right. Three are opposed to this concept. Each panel member will have five minutes to present his or her opinion and answer questions. Additional time for questions may be allotted after the presentations are completed. The panelists will alternate between pro-and-con viewpoints when making their speeches.

Role 1: Ted Connelly Good afternoon. I'm Ted Connelly, one of your United States senators. Interestingly enough, we just passed the 50th anniversary of the Universal Declaration of Human Rights, and it is fitting to reflect upon the nation's progress toward ensuring that health care is treated as a basic human right. Article 25 of that Declaration states that every person has a right to medical care, an ideal reaffirmed in Article 12 of the International Covenant on Economic, Social, and Cultural Rights. Unfortunately, despite these statements, the guarantee of health care as a basic human right for all our citizens remains elusive.

In a period of unprecedented prosperity in the United States, millions of citizens work in minimum-wage jobs and are unable to meet the medical needs of their families. Tragically, health insurance and care are luxuries many of these struggling families cannot afford.

Most Americans agree that good health is an essential part of the American dream. The pursuit of other goals depends on good health and access to good health care! People suffering from ill health cannot work, so they cannot earn money. In addition, those with poor health often do not have the stamina needed to improve themselves through education.

Children suffer because their parents cannot afford decent care. Families face financial disaster because of the high cost of serious illness. Every such case in our affluent society mocks the right to life, liberty, and the pursuit of happiness—this nation's primary objectives.

Disease and injury deprive too many Americans of the opportunity to enjoy fundamental rights. Good health care ought to be a basic right for all Americans, and it is unconscionable for any person—parent or child—to receive preferential or inferior care based on the ability to pay. We need universal health care, so that all Americans will have equal access to quality health care.

Role 2: Richard Hanson Hi, I'm Rick Hanson, your former governor and now a university professor. I have a little story that gets to the point of this issue. Late in the 13th century, Martin of Tours was riding his horse, alone and cold, toward a walled city. Just outside that city, he came across a cold and starving beggar. In an act of charity, he gave half of his cloak and half his dinner to the beggar. His unselfish act was clearly the moral and ethical thing to do and has served as an example of unassuming charity for centuries. Yet this question arises: What if instead of one cold and starving beggar, he had encountered 50, 60, or 100? What would the ethical choice be then? There is no way to choose one from the many.

It is my belief that this parable applies to the dilemma that the world now faces in terms of health care. All of the world's nations face the dual challenge of expanding basic health care to the medically indigent and setting limits on what benefits taxpayers are to subsidize. Setting limits is the more difficult challenge because of the endless cures and treatments that technologically advanced societies can now provide. Remember, too, that nine-tenths of hospital costs and two-thirds of physicians' fees in the United States are paid by insurers, either public (government) or private. In either case, insurers have to set priorities on how to maximize health status within the scope of their limited budgets. Which benefits should be paid for, and which shouldn't? Every year there are different answers as advances in technology and science increase our options.

In the past 30 years in the United States, spending on health care has increased from 4 percent of gross domestic product (GDP)—a measure of the total annual worth of the goods and services that a nation provides—to 14 percent of GDP. This represents a growth rate two and one-half times the rate of inflation. Our national health bill is now over $1 trillion a year. So on the basis of both percentage and dollar figures, we commit more to the health sector than any other country in the world does.

To quote from a health economist paraphrasing Winston Churchill, "a nation can provide all of the people with some of the care that might do them some good; it can provide some of the people with all of the care that might do them some good; but it cannot provide all of its people with all of

the care that might do them some good."

Role 3: Sandra Chao Hello, everyone. I'm Sandra Chao, a government economist who has had some impact on President Clinton's plan to revamp health care. While it is true that the United States spends more per capita (per person) than any other industrial nation for health care, we do not necessarily receive better service. Nearly every other developed nation ensures good health care to all of its people at an affordable price yet spends a smaller portion of its gross domestic product on medical care than the United States.

Why is this? Too often, individual doctors are no longer in control of the health-care system. Instead, health maintenance organizations and managed care plans determine care, and the system is focused more on profits than on healing the sick or maintaining the nation's physical health.

Even though we are a nation that places a high value on health care, we have done very little to ensure that quality care is available to everyone at an affordable price. Inner-city and rural areas have difficulty retaining doctors and maintaining hospitals, and complicated insurance policies confuse and trap patients in gaps, limitations, and exclusions. Some of these policies offer benefits so inadequate that serious injury or illness can result in financial ruin to persons who thought they were fully insured.

I think that all Americans should contribute, according to their ability to pay, to a national fund that would cover the cost of preventing and treating injury and illness. Everyone should be eligible to receive the same comprehensive benefits. No one would lack coverage. Above all, no one would be excluded simply on the basis of the cost of any given procedure.

Role 4: Frances Novak Good afternoon, my name is Frances Novak, and I have been fighting to bring medical treatment to the indigent since before I graduated from law school. But I have never considered heath care to be a "right" or a "human right." Rights are defined and interpreted by the judicial system, the courts. A "right" trumps all other categories of social spending, and it is imperative that we do not dilute or diminish the meaning of important words—such as *rights*—through overuse.

A just society has many "needs" that cannot and should not be considered "rights." "Rights" are ultimate values that a society must protect at all costs. Rights in the United States are delineated in the Constitution and its amendments, and it is problematic to consider health care as a "right." If health care is considered a right today, what will be considered a right tomorrow? We can easily dilute the meaning of the word *rights* by idealistically claiming that all good things are "rights."

Rights are an ineffective way of determining who or what is covered by public policy, which is in reality a world of choices, priorities, and trade-offs. A government must weigh total social need and cannot allow one social good to override others. How, for example, could our government—which is subject to voter rebellion on tax issues—provide liver or heart transplants for everyone without the resources to do so? Recognizing a universal right to health care could bankrupt the national economy.

Role 5: Ty Bonnor Hello, I'm Ty Bonnor, a political science professor at the local college. We have made some progress in the health-care area in recent years. In 1996, Congress passed the Health Insurance Portability and Accountability Act, which helps people keep their insurance when they change or lose their jobs. It also helps job-hoppers avoid being subjected to exclusions for pre-existing conditions in their insurance coverage. In 1997, Congress created a new children's health insurance program that could invest as much as $24 billion to extend health insurance to more children of low-income families over the next five years. Bills were also introduced, but died, in the last Congress that would have expanded medical coverage for retirees and uninsured Americans between the ages of 55 and 64—until they qualify for Medicare.

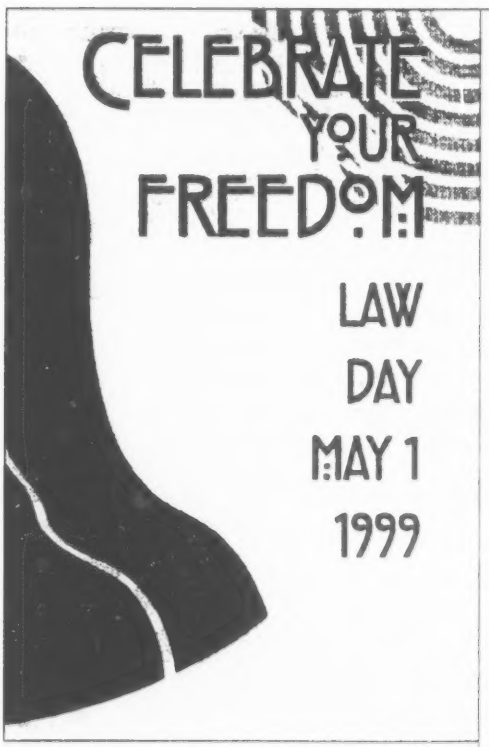
Unfortunately, some in Congress are now pursuing regressive alternatives that would encourage individual

health accounts at the expensive of employer-based coverage. This would further undermine the deteriorating system that we already have. At present, too many families are forced to gamble with their financial future and health because insurance is out of reach. They cannot obtain good care because their incomes are too low to buy insurance but too high to qualify for government programs. Often, these people live in areas where little or no care is even available.

We, the people, have the knowledge, wealth, and ability to ensure that all Americans receive the health care they need at an affordable price. What we lack is the will to provide the care. I am convinced that, if the public insists on reform, Congress will provide it. Make it clear to your representatives that you strongly favor health care as a human right.

Role 6: Cecilia Mendez Hi, my name is Cecilia Mendez. I am a doctor of medicine and philosophy. Let me begin by observing that a decent and just society is a structure supported by many important pillars. Health care is one of these pillars as are education, justice, defense, transportation, and a livable environment—to name a few. The concept of rights has been useful in expanding freedom and justice. Yet I am increasingly skeptical that human rights is an appropriate tool for the distribution of social good by governments. One may declare that "human rights" include not only freedom but also health care, housing, livable wages, and clean air. Beyond being laudable goals, these objectives simply are not universally achievable in a world where governmental budgets require balancing acts.

People have a right to worship, but government cannot build them churches. Individuals have a right to free speech, but the government cannot provide them access to media. It is the government's role to recognize rights and to avoid infringing on them. Our social policy must take great care to avoid turning goals into rights and rights into entitlements.



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Forum Ballot

Should Health Care Be Considered a Human Right?

Circle the choice that best answers how you feel about the issue of health care as a human right.	strongly agree				strongly disagree
1. Taxpayer-subsidized Medicare and Medicaid are sufficient to fulfill the medical care requirements of the truly needy.	1	2	3	4	5
2. Employers should commit more resources to health programs.	1	2	3	4	5
3. Doctors' fees ought to be regulated.	1	2	3	4	5
4. State and local governments should build more nonprofit hospitals.	1	2	3	4	5
5. The United States needs socialized medicine, under which every citizen, no matter how rich or poor, is treated equally.	1	2	3	4	5
6. Health-care organizations should be monitored so that profit considerations do not cause the withholding of expensive treatment.	1	2	3	4	5
7. The transition from care overseen by doctors to managed care needs to be evaluated.	1	2	3	4	5
8. Health maintenance organizations that refuse needed life-sustaining care to patient-clients should be fined for the amount of the avoided costs, and the patient should be awarded the damages.	1	2	3	4	5
9. If there were more doctors, there would be more competition, and the price of health care would go down.	1	2	3	4	5
10. Americans have no inalienable right to health care at taxpayers' expense.	1	2	3	4	5
11. Given the medical breakthroughs of the past decade, paying $1 trillion a year for medical costs seems a bit much.	1	2	3	4	5
12. If we could cure more people of their illnesses, they could become more productive members of society, pay more taxes, and essentially cover the cost of the cure.	1	2	3	4	5
13. If we put people in hospitals at little or no cost to themselves, we would create an entirely new welfare system that would permit "patients" to have free room and board for as long as they wanted.	1	2	3	4	5
14. If there had to be a choice between allocating money for health care and education, more should go to health care.	1	2	3	4	5
15. Health-care reform may be needed, but the proposed right to medical care is not as important as the right to free speech, the press, or religion.	1	2	3	4	5

Write a short answer. Is good health a human right and should governments ensure this right by guaranteeing health care?

Resources for Teaching

Human Rights Educational Resources

Nancy Flowers

Update on Law-Related Education, 22.3, 1999, pp. 59–60. © 1999 American Bar Association.

ORGANIZATIONS

Amnesty International Educators' Network
53 W. Jackson Street, Room 1162
Chicago, IL 60604
Fax: (312) 427-2589
aiusa-hred@amnesty-usa.org

Center for Human Rights Education
P.O. Box 311020
Atlanta, GA 31131-1020
Tel: (404) 344-9629
Fax: (404) 346-7517
CHRE@aol.com

Cultural Survival
96 Mt. Auburn Street
Cambridge, MA 02138
Tel: (617) 441-5408
Fax: (617) 441-5417
csine@cs.org

Franklin and Eleanor Roosevelt Institute
801 Second Avenue, 2nd Floor
New York, NY 10017-4706
Tel: (212) 907-1343
Fax: (212) 682-9185
udhr50@unausa.org

Partners in Human Rights Education and
Human Rights USA Resource Center
310 4th Avenue South, Suite 1000
Minneapolis, MN 55415-1012
Toll Free: (888) HREDUC8
Tel: (612) 341-3302
Fax: (612) 341-2971
www@hrusa.org
humanrts@tc.umn.edu

People's Decade for Human Rights Education
526 West 111th Street, Suite 4E
New York, NY 10025
Tel: (212) 749-3156
Fax: (212) 666-6325
pdhre@igc.org

Street Law, Inc.
918 16th Street NW, Suite 602
Washington, DC 20006-2902
Tel: (202) 293-9988
Fax:(202) 293-0089
hrusa@tc.umn.edu

EDUCATIONAL RESOURCES

Amnesty International Animated UDHR video—A lively 25-minute film for all ages with artists from different countries illustrating the 30 articles of the UDHR. $25 from Amnesty International USA Publications Department, (212) 807-8400, or any Amnesty regional office.

Amnesty International Interactive CD-ROM—Contains a wealth of human rights information, including focus on specific country and contemporary issues, documents, history, biographies, and interviews with activists. Offers a rich diversity of cultural styles in art, music, and animation. (For grades 7–12) $10 from Amnesty International USA Publications Department, (212) 807-8400, or any Amnesty regional office.

Amnesty International Human Rights Education Resource Notebooks—Collections of classroom activities for grades K–12 on 12 specific topics, including the UDHR, children's rights, women's rights, gay and lesbian rights, and the death penalty. $5 each plus shipping and handling from the HRUSA Resource Center.

The Curriculum Resource Program of Cultural Survival—Offers materials for grades 7–adult on the rights of ethnic minorities and indigenous peoples, including videos, study guides, and a quarterly magazine available from Cultural Survival.

Human Rights for All—A comprehensive, highly readable text for grades 7–12 that addresses principal human rights issues, with discussion questions and activities. Student Edition, $23.50; Teacher's Edition, $26, available from Street Law, Inc.

Human Rights Here and Now—Written to mark the 50th anniversary of the UDHR, this curriculum for grades K–12 provides an introduction to human rights along with more than 20 classroom and community service activities. A set of 200 is available for $50 from the HRUSA Resource Center; individual copies are free of charge with a $5 shipping and handling fee.

The HRUSA Resource Kit—A complete collection of the best human rights educational materials available, including an animated video, interactive CD-ROM, posters, calendar, resource books, and bibliographies. These items can also be ordered separately. $50, plus $5–$10 shipping and handling, depending on location, from the HRUSA Resource Center.

HDHR Passbooks—Passport-sized booklet containing the text of the UDHR. Up to 200 available free of charge, with a shipping and handling fee of $5–$7, depending on location, from the HRUSA Resource Center; larger quantities available at $.20 each.

WEB SITES

The Franklin and Eleanor Roosevelt Institute at www.udhr50.org is coordinating a celebration of the UDHR 50th anniversary.

Human Rights USA at www.hrusa.org offers an a rich resource for human rights history, issues, documents, and projects, as well as a calendar of nationwide human rights education events and useful links to other sites.

People's Decade for Human Rights Education at www.pdphre.org provides useful resources, especially concerning women's human rights and social and economic justice.

More Resources...

Publications

Bunch, Charlotte. "Women's Rights as Human Rights: Toward a Re-vision of Human Rights." *Human Rights Quarterly* (1990) 12: 486–98.

Cobbah, Josiah A. M. "African Values and the Human Rights Debate: An African Perspective." *Human Rights Quarterly* (1987) 9: 309–31.

Cranston, Maurice. "Are There Any Human Rights?" *Daedalus* (1983) 112: 1–17.

Facts About Children and the Law. ABA Division for Media Relations and Public Affairs. Chicago: American Bar Association, 1997.

Facts About Women in the Law. ABA Division for Media Relations and Public Affairs. Chicago: American Bar Association, 1998.

Focus on Law Studies: Teaching About Law in the Liberal Arts (fall 1992) 8.1.

Levesque, Roger J. R. *Adolescents, Society and the Law: Interpretive Essays and Bibliographic Guide*. Teaching Resource Bulletin No. 5. Chicago: American Bar Association, 1997.

Peters, Julie, and Andrea Wolper. *Women's Rights, Human Rights: International Feminist Perspectives*. New York: Routledge, 1995.

Renteln, Alison Dundes. *International Human Rights: Universalism versus Relativism*. Newbury Park, Calif.: Sage, 1990.

Shiman, David A. *Teaching Human Rights*. Denver: University of Denver Center for Teaching International Relations, 1999.

Web Sites

http://diana.law.yale.edu/—Project Diana is the international archive of human rights legal documentation housed at Yale Law School's site. Having a plethora of online documents related to human rights issues, Project Diana can support keyword or topic searches.

http://www.cartercenter.org/—The Carter Center strives to relieve suffering caused by war, disease, famine, and poverty by advancing peace and health worldwide.

http://www.umn.edu/humanrts/—The University of Minnesota Human Rights Library offers an extensive collection of human rights documents and materials.

http://www.un.org/Pubs/CyberSchoolBus/humanrights/index.html/—Human Rights in Action web site, designed by the UN for use in teaching about human rights. Teaching materials and classroom guide are provided. Includes questions submitted by students and answered by experts.

http://www.un.org/rights/—This UN site provides information on UN documentation research, briefing papers, and the Universal Declaration of Human Rights.

http://www.unsystem.org/—The Official Web Site Locator for the UN system, this site offers easy access to UN information on the web.

http://www.videoproject.org/—The Video Project's web site. This nonprofit source of educational media carries videos on a variety of topics, including human rights. Access their page on human rights videos to see what's offered. Videos include grade-level recommendations.

http://www.yale.edu/lawweb/hrpage.htm—This Yale University web site has extensive links to human rights documents and organizations. Also includes information about law journals, schools, and libraries.

A Human Rights Glossary

Nancy Flowers

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A

adoption—Process by which a state agrees to international law. With regard to conventions, *adoption* usually refers to the initial diplomatic stage at which a treaty is accepted; to become effective, a convention usually must be ratified by a state's legislative body after adoption.

African Charter on Human and Peoples' Rights—Adopted in 1981 and entered into force in 1986, this charter establishes human rights standards and protections for the African region; notable for addressing community and group rights and duties.

American Convention on Human Rights—Adopted in 1969 and entered into force in 1978, this convention establishes human rights standards and protections for the Americas and creates the Inter-American Commission on Human Rights.

C

civil and political rights—The rights of citizens to liberty and equality; sometimes referred to as first generation rights. Civil rights include freedom to worship, to think and express oneself, to vote, to take part in political life, and to have access to information.

codification, codify—The process of bringing customary law to written form.

Commission on Human Rights—Body formed by the Economic and Social Council (ECOSOC) of the UN to deal with human rights; one of the first and most important international human rights bodies.

convention—Binding agreement between states; used synonymously with *treaty* and *covenant*. Conventions are stronger than declarations because they are legally binding for governments that have ratified them. When the UN General Assembly adopts a convention, it creates international norms and standards. Once a convention is adopted by the UN General Assembly, member states can ratify the convention, promising to uphold it. Governments that violate the standards set forth in a convention can then be censured by the UN.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)—Adopted in 1979 and entered into force in 1981, this convention is the first legally binding international document prohibiting discrimination against women and obligating governments to take affirmative steps to advance the equality of women.

Convention on the Rights of the Child—Adopted in 1989 and entered into force in 1990, this convention sets forth a full spectrum of civil, cultural, economic, social, and political rights for children.

covenant—Binding agreement between states; used synonymously with *convention* and *treaty*. The major international human rights covenants, both passed in 1966, are the International Covenant on Civil and Political Rights

"The Universal Declaration of Human Rights was a landmark of civilization and the first global attempt to define relationships on the basis of rights. It paved the way for one of the great discourses in the history of mankind."

Basil Fernando
Director, Asian Legal Resource Centre
Hong Kong, China

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Source: Adapted and reprinted from Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights, *ed. Nancy Flowers (Chicago: Amnesty International's Human Rights Educators' Network, 1998) pp. 133–36, by permission of the publisher.*

(ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

cultural relativism—a method of social analysis that stresses the importance of regarding social and cultural phenomena from the viewpoint of those who belong to or who support a given culture; a necessary corrective to ethical ethnocentrism, relativism, which assumes that there is no one culture whose customs and beliefs dominate all others in a moral sense, has been used to criticize any outside discussion of local human rights violations as ideological imperialism.

customary international law—Law that becomes binding on states although it is not written but adhered to out of custom. When enough states have begun to behave as though something is law, it becomes law "by use." This is one of the main sources of international law.

D

declaration—Document, which is not legally binding, that states agreed-upon standards. UN conferences, like the 1993 UN Conference on Human Rights in Vienna and the 1995 World Conference for Women in Beijing, usually produce two sets of declarations: one written by government representatives and one by nongovernmental organizations (NGOs). The UN General Assembly often issues influential but legally nonbinding declarations.

E

economic rights—Rights that concern the production, development, and management of material for the necessities of life. *See* social and economic rights.

enter into force—When a convention becomes effective; the point at which enough states have ratified a convention to make it effective.

European Conventions for the Protection of Human Rights and Fundamental Freedoms—Signed in 1950 and entered into force 1953, this regional document guarantees civil and political human rights and establishes the European Court of Human Rights.

G

Geneva Conventions of 1949 for the Protection of War Victims—Adopted in 1949 and entered into force in 1950; the main source of International Humanitarian Law.

H

human rights—the rights people are entitled to simply because they are human beings, irrespective of their citizenship, nationality, race, ethnicity, language, sex, sexuality, or abilities. Human rights become enforceable when they are codified as conventions, covenants, or treaties, or as they become recognized as customary international law.

humanitarian law—The international rules that establish the rights of combatants and noncombatants in war, embodied in the Geneva conventions.

I

inalienable—Refers to rights that belong to every person and cannot be taken from anyone under any circumstances.

indivisible—Refers to the equal importance of each human rights law. A person cannot be denied a right because someone decides it is "less important" or "nonessential."

interdependent—Refers to the complementary framework of human rights law. For example, your ability to participate in your government is directly affected by your right to express yourself, to get an education, and even to obtain the necessities of life.

intergovernmental organizations—Organizations sponsored by several governments that seek to coordinate their collaboration; some are regional (e.g., the Council of Europe, the Organization of African Unity), some are alliances (e.g., the North Atlantic Treaty Organization—NATO); and some are dedicated to a specific purpose (e.g., the UN Centre for Human Rights; UNICEF for children; and UNESCO for educational, scientific, and cultural concerns.

International Bill of Rights—The combination of these three documents: the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

International Covenant on Civil and Political Rights (ICCPR)—Adopted in 1966 and entered into force in 1976, this convention declares that all people have a broad range of civil and political rights; one of three components of the International Bill of Rights.

International Covenant on Economic, Social and Cultural Rights (ICESCR)—Adopted in 1966 and entered into force in 1976, this convention declares that all people have a broad range of economic, social, and cultural rights; one of three components of the International Bill of Rights.

M

member states—Countries that are members of the United Nations.

N

nongovernmental organizations (NGOs)—Organizations formed by people outside of government. NGOs monitor the proceedings of human rights bodies such as the Commission on Human Rights and are the "watchdogs" of the human rights that fall within their mandates. Some are large and international and work on many issues (e.g., the Red Cross, Amnesty International, the Girl Scouts); others may be small, local, and focused on a single concern (e.g., an organization that advocates for people with disabilities in a particular city; a coalition to promote women's rights in one refugee camp). NGOs play a major role in influencing UN policy, and many of them have official consultative status at the UN.

P

political rights—The right of people to participate in the political life of their communities and society, for example, the right to vote for their government or run for office. See civil and political rights.

R

ratification, ratify—Process by which the legislative body of a state confirms a government's action in signing a treaty; formal procedure by which a state becomes bound to a treaty after acceptance.

reservation—An exception made by governments when they ratify a convention but wish to exclude certain sections. States are not allowed to make reservations that undercut the fundamental meaning and intention of the convention.

S

sign—In human rights the first step in ratification of a treaty; to sign a declaration, convention, or one of the covenants constitutes a promise to adhere to the principles in the document and to honor its spirit.

signatory or signatory states—Countries that have signed a treaty, convention, or covenant.

social and economic rights—Rights that give people social and economic security, sometimes referred to as security-oriented or second generation rights. Examples are the right to food, shelter, and health care. There is disagreement about whether the government is obligated to provide these benefits.

state—Often synonymous with *country*; a group of people permanently occupying a fixed territory having common laws and government and capable of conducting international affairs.

states parties—Those countries that have ratified a covenant or convention and are thereby bound to conform to its provisions.

T

treaty—Formal agreement between states that defines and modifies their mutual duties and obligations; used synonymously with *convention*. When conventions are adopted by the UN General Assembly, they create legally binding international obligations for the member states that have signed the treaty. When a national government ratifies a treaty, the articles of that treaty become part of its domestic legal obligations.

U

United Nations Charter—Initial document of the UN setting forth its goal, functions, and responsibilities; adopted in San Francisco in 1945.

United Nations General Assembly—One of the principal organs of the UN, consisting of all member states. The General Assembly issues declarations and adopts conventions on human rights issues, debates relevant issues, and censures states that violate human rights. The actions of the General Assembly are governed by the Charter of the United Nations.

Universal Declaration of Human Rights (UDHR)—The 1948 declaration that is the primary UN document establishing human rights standards and norms. Although the declaration was intended to be nonbinding, through time its various provisions have become so respected by states that it can now be said to be customary international law.

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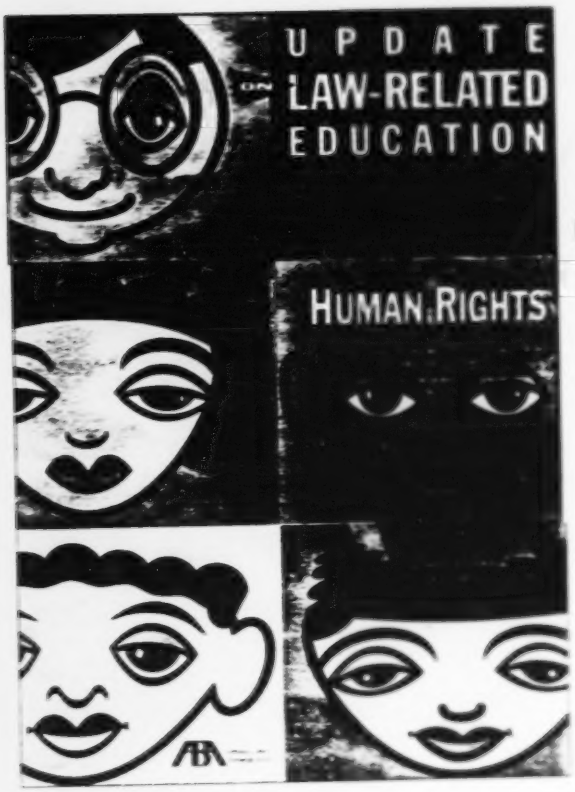
1. h
2. d
3. j
4. a
5. b
6. g
7. c
8. f
9. i
10. e



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